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# JUSTICE

VINDICATED

From the False Fucus put upon it,

BY

THOMAS WHITE Gent.

M<sup>r</sup> THOMAS HOBBS,

AND

HUGO GROTIUS.

AS ALSO

## ELEMENTS

OF

## Power & Subjection;

Wherein is demonstrated the Cause of all Humane,  
Christian, and Legal

## SOCIETY.

And as a previous Introduction to these, is shewed,

*The Method by which Men must necessarily attain*

## ARTS & SCIENCES.

By ROGER COKE.

LONDON, Printed by Tho. Newcomb for G. Bedell and T. Collins,  
at the Middle-Temple-Gate, Fleetstreet. 1660.

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FROM THE EASTERN FRONT

28. FOM 21. M O H P M

[illegible]

Christians and Jews

3100



*To the Kings most Excellent Majesty,*

**CHARLES II.**

*By the Grace of GOD,*

**KING of GREAT BRITAIN,**

**FRANCE and IRELAND,**

*Defender of the Faith.*



If it were not unbecoming confidence, (*Most Eminent of Kings!*) in *Hugo Grotius*, who at most did owe Your Illustrious Uncle *Lewis* the Thirteenth, but a topical and temporary obedience, to dedicate his Book *De Jure Belli & Pacis*, to him, founded upon such feigned and inconsistent principles, because written for *Justice*: Then will it not ill become a natural Subject of Your Majesties, who by all divine and humane laws owes an indelible character of obedience to Your Majesty, to implore Your patronage of *Justice*, founded upon the true and genuine causes. Nor is there any attribute of *Justice*

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which



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which *Grotius* there ascribes to Your Uncle, but is as properly or more due to Your Majesty. For, if ~~it~~ were just, because above any thing which might be spoken, he did honor the memory of the great King his Father, by imitating him; how just then is Your Majesty, who has not all the storms of adverse fortune in Your Father or Self, could ever any ways shake the constant veneration You have always paid his Saintlike memory, by imitating him; whereas prosperity did almost ever fill the sails of Your Uncle and his great Father! If he were just, because he did instruct his Brother by all means, but most by his own example; then is not Your Majesty less just, who by all means, but most by Your own Example, hath so well instructed Your Brethren, that they in all respects answer the dignity of their high extraction, and whose eminent Virtues have attained such a height of perfection, that they are justly celebrated all over Christendom with admiration! If he were just, because he did adorn his Sisters with highest matrimonies; (yet certainly it was rather the felicity of his fortune, then acts of his justice, that he was by the marriage of his Sisters allied to all the greatest Hereditary Princes of Christendom:) how just then is your Majesty, who hath so adorned Justice and Piety, that as being by nature wedded to these (though born one of the greatest Princes of the Western world) You have preferred them before the enjoyment of Three Kingdoms! If he were just, because he did call back the almost buried Laws, and opposed himself to a Generation making haste into worse: Who then can express Your justice, who hath recalled our buried

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buried and almost forgotten Laws, and who with most manifest danger, yet by Providence miraculously preserved for your Subjects deliverance, did oppose your self against the Tyranny of the most perverse generation of men that ever pretended to be Christians! If he were not only just, but also clement, whenas he took from his Subjects, who by ignorance of his goodnes had transgressed the bounds of their duty, nothing but the liberty of sinning, nor did force their consciences differing from him in Religion: Let the world then judge and admire your justice and clemency, who of your own accord does refer the most perpetrated villany committed in the sight of the sun, upon the person of your Royal Father, not by your Subjects ignorant of his and your goodness, but by those who had known his clemency and goodness, and in the worst of their wickedness needed not have despaired of his favor, to those of your Subjects neither convened nor elected by your authority! And are so far from taking any thing from your peccant Subjects, more then liberty of sinning, that you admit of a restitution to those of your Subjects, who by such undue means had invaded the sacred patrimony of Gods Church, and your Crown. And though these things were committed upon pretence of Religion; yet so tender is your Majesty, that you will force no mans conscience, not of these men! And if it were justice and mercy in your glorious Uncle, in the prosperity of his fortune to relieve oppressed people and Princes by his authority; then was it no ways less justice and mercy in your Majesty, that in the adversity of your fortune, you did by all

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means endeavour by your authority to relieve the oppressed and distressed Princes and people of Christendom.

To You therefore, *Great Sir* ! being the Fountain and Centre of Justice in these your rightful Dominions, in the lowest posture of humility, do these *Observations* and *Elements* presume to offer themselves, though not upon any confidence of themselves, or Author, but because written for and in defence of Justice. To You, *Sir*, who by an indifferent administration of just, received and known Laws, and moderating the severity of them, (Your Majesty being their Moderator, as well as Arbitrator) where it becomes impossible for your Subjects to fulfil them, or inconvenient to Your self, or Subjects, in rigor to execute them, (if it be not your Subjects fault) shall not less, under God, confer peace and happiness to all sorts of them, then the Sun by its effluence does diffuse life and light to all the various creatures of the Universe. This is it, which in time will reduce your wandring Subjects to the secure and known paths of their Allegiance, out of which they have gone astray : This is it, which will secure you from the imputation of Tyranny, and convince your adversaries that it is not your fault in governing, but theirs in disobeying, if hereafter they bring upon themselves the miseries and calamities of another Civil war : And this is that, which will evidence to the world, that then your adversaries became enemies to your Royal Father and Self, when they first trod under foot the established and received Laws of their Country ; and that it is, and always was the desire of Usurpers, who having  
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no just title but new Oppression, to introduce more new Inventions of their own, in place of the old Laws. This is it, which after your Majesties gracious *Act of Oblivion* for crimes past, will so settle the minds of your Subjects, that in the known ways of their ancestors, they may expect favor and protection from your Majesty. This is it, which will so genuinely and equally support your Majesties Title, that as it is so derived from the loins of innumerable Royal Ancestors, as no man can shew where it began, and so clear, that in the world no man presumes to stand in competition with You; so is it supported by received Laws of that continuance, that they have lost their first original.

I presume not, Sir, to say this of mine own head, to advise your Majesty, much less have any diffidence of your Majesties governing your Subjects any other way then by the established and received Laws of the Nation, where mens vices and depraved manners do not require new ones: I designe no more then to demonstrate, that it was not your Majesties Father's, and your own adherence to the established Laws, but the iniquity of the times, which made him a Victim, and your Sacred self an Exile. Nay, in reason, as well as justice, it had been a most imprudent thing in either of your Majesties to have given up the Laws to the arbitrary lusts of your Adversaries, or any one Faction: For, should either of your Majesties have indifferently renounced the Laws to your Adversaries, being compounded of such different and contrary humors and affections, then there was no visible means under Heaven to have cemented them, and by consequence your Adversaries hostility and confusion continued, and your own conditions no ways  
bettered



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bettered or secured : Or should either of your Majesties have renounced the Laws, to have advanced any one Faction so above the rest, and all your loyal Subjects, that their arbitrary wills and lusts should have been the laws of all the rest, and your other Subjects also : yet should you not only have failed to have contented that Faction, ( it being the nature of Faction, never to bear any grateful acknowledgment for benefits received, but on the contrary always abuse them to their prejudice from whom they received them, and never rest until they have made themselves all, and their Benefactors nothing at all, or vile and miserable ) but have animated all the other Factions against your Majesties and it.

To the fulfilling of all singular and glorious Virtues in Your Sacred person, is added Your being a Christian King, and a Nursing Father of the Church of Christ, and as if immediately sent from Heaven to cure and repair the wounds of this most miserably distracted Church, although Your Majesty is descended from innumerable Royal Ancestors, who have been Nursing Fathers of Christs Church ; yet are you not derived from any who have had the least hand in the late Sacrilege thereof. And though, Sir, You are and ought to be a Nursing Father of Gods Church, and a Patron and Defence against her ravenous and devouring Adversaries, yet none of mortal men have been more Religious Sons of the Church, then Your Majesty, and Your Saintlike Father.

How unequal, and how unjust then have been the sufferings of Princes so just, so religious, caused by Christians, Your natural Subjects, and these pretending Conscience : whereas no School teaches men a better lesson

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Lesson of obedience to Princes, then the Christian faith; whereas the first principle or foundation of Subjects obedience to rightful Princes, is founded in the Law of Nature; however popular Orators and Atheists have, against all sense, reason, nature, and all authorities of sacred and profane History, resolved it into the pacts and wills of men. And conscience always supposes some superior law informing men to do, or not do a thing, or suffer, when any subordinate power commands contrary to it; whereas Your persecutors pretending conscience, trod underfoot whatsoever might be called sacred, to the attaining their seditious and sacrilegious ends.

That God in his providence doth often permit the good and just to suffer persecution, is evidently seen in all ages and places: But in reason and prudence, neither Your Majesties Father's, nor Your own adherence to the established Government of the Church; and the Rites, Liturgy, and Means thereof, in Your adversities, when they were so zealously persecuted by its and Your adversaries, could be any cause thereof: Neither would the desertion of it, have any ways conduced to either of Your Majesties advantage; for, should either of Your Majesties have renounced the Church and rites thereof, so as to have been a Christian King of such Miscreants, who (besides that they would not be of any Christian Church or society) had by undue ways devoured the patrimony of the Church; yet no man in his right wits could have imagined such men would long have been governed in peace, or that all other men of their factions would have been content, who had not made a prey thereof; and there was not sufficient to content all, nor indeed any at all; or that the canine appetites of those  
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men who had devoured the lands of the Church, would not also have hungered after those of the Crown. Or should Your Majesty have advanced any one Faction so above the rest, that it should not only have tyrannized over the rest of the Factions, but also Your Majesty and the rest of Your subjects; yet could it not in reason have been expected, that this Faction (who by all Divine and Humane laws were subject to a Government, founded upon our Saviour and his Apostles, and by a continued series dispersed over the face of Christianity, until of late it became violated in some places of *Europe* by seditious and sacrilegious men) should so unjustly cast off their obedience so rightfully due, and yet expect that their wills and lusts should long be received for Laws by the rest of the Factions, and all other of their fellow-subjects. But certainly, Your constant adherence to the Church, did proceed from the power and grace of God in You, before any prudential or moral cause.

Notwithstanding that your Majesty is so constant a Preserver of Christs Church, and Propagator of Christian religion, and that your own conscience hath been so often attempted to be violated (by men of none at all indeed;) yet so tender is your Majesty of other mens, that you will not force the conscience of any of your subjects, pretending it. A strange condescension, any one will judge, who considers the parties granting, and expecting: For, should your Majesty command your Subjects any thing in derogation to the Majesty of God, or forbid them the worship and service of God, your Subjects might then justly plead conscience, because the duty and allegiance which they owe to God, is in the first place to be paid by all his creatures: Or should your Majesty

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Majesty command any thing which were immoral or unjust, as that your Subjects should dishonor your Majesty or their Parents, &c. they might justly plead conscience, because that for Subjects to honor their King, and children their Parents, is founded in Nature, and is a Law of God engraven in the minds of all mortal men; or should your Majesty have lived in the Primeve times of Christianity, when men by the light of Humane Nature apprehending a Deity to be publickly Worshipped and Served, yet being ignorant of the manner, misplaced it in *Osiris, Isis, Iupiter, Apollo, an Oak, &c.* then to have compelled them to have Worshipped God after the manner of Christians, had been unconscionable and unchristian, because they paid an acknowledgement of that Worship due to God by Nature, and could not by Nature apprehend this, but must wait upon God, until (that by the ordinary means of the Church, or supernaturally inspired by God,) they should be converted thereunto: Or should your Majesty command any thing in derogation to Christian Faith or Religion, they might plead Conscience, because the Obedience they owe thereunto is superior to all Humane Laws: But when as God is to be publickly Worshipped, and your Majesty obeyed by the light of Humane Nature, when as he that heareth, and obeyeth not the Church, is to be accounted an Infidel and Heathen man; and neither your Majesty nor Church enjoyning any thing contrary to the Law of Nature, or Gods Will revealed in Scriptures, but conformable to these, for men, your natural Subjects, and Born and Baptized in a Christian Church, in contradiction to all these, to plead Liberty of Conscience, to be Atheists, Hypocrites, and Schismatics, is such a mon-



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strous Paradox, as is not imaginable should proceed from reasonable creatures, not aiming at some further mischief: And when your Majesty shall with bleeding tears reflect upon the manners of these men thus pretending Liberty of Conscience, you will finde them never to have made any conscience of Liberty, their Manners no whit better then their Religion: but as great enemies to Humane Society; as Christian Religion: For they no sooner, upon pretence of Liberty of Conscience, got licence of action, but what followed; Rapine, Plunder, Sequestration, Sacriledge, Regicidism and Murder, upon the Estates of the Church, Crown, and the Sacred Person of your Royal Father, and the principal members of Church and State, who were your best and most Loyal, and their Fellow-Subjects: when as by the Law, or Light of Nature, no man ought to do that willingly to another, which he would not have done to himself. Nor is this humor only Topical, or confined within the limits of your Dominion; but wheresoever men would not pay the Duty they ought to God in the first Table, they have never better perform'd that to their neighbor in the second, although it hath not pleased God to permit them to attain such a degree of Impiety, as here in your Majesties Dominions; and your Majesty may believe it, that the times are changed, not these mens manners and dispositions, to attempt the like again whensoever they get an opportunity; however, these things at present will be better cured by your Majesties Christian Patience and example, then by your severe Execution of the established Laws against them; yet if the Laborer be worthy of his Hire, then is he who is Hired worthy to Labor; and these men who pretending Conscience, neglect or refuse

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*The Epistle Dedicatory.*

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refuse to perform the Duties of the Church, are utterly unworthy the Means of the Church.

Mans necessity is Gods opportunity : It is Gods usual way in his Providence (doubtless to manifest the greatness of his Power to us Mortals here below) when mens extremities are at the highest, then to relieve them, having, it may be, the least reasons or hope to expect it; and indeed what less then the power and grace of God in a Christian Prince, so Religious, so Just, so Merciful, and so descended, at such a time, could have cured the wide wounds of our miserable Church, and distracted State? *Davila* reports of *Coligny* the Admiral of *France*, that he would usually prefer himself before *Cæsar* or *Alexander*, because they acquired greatness by prosperous Fortune; whereas notwithstanding that Fortune was always adverse to him, he still rose more formidable and terrible to his adversaries : Sure it is an admirable thing, that after all the adversity of your Affairs, God should without force or blood, exalt your Sacred Head above the Storms and Waves of such Enemies, who had neither Religion, Law, Justice or Reason, but only force and blood in stead of, and against these, to maintain their Cause.

It cannot but be a consolation to any man in adversity, rightly considering, how God (in the ordinary nature of things,) does afflict men who place happiness in things of this world, and reward the afflictions of men (especially who suffer for a good Conscience) even in this world; for no man placing happiness in things here below, can so enjoy them, but necessarily a time will come when he shall say, I take no pleasure in them; and then it will be *miserum fuisse beatum*; whereas other men who are afflicted, and suffer persecution, are no ways  
afflicted



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affrighted at the terrors of death, but rather with joy expect happiness in another world; after they shall be freed from the cares and troubles of this; or if it pleases God to free them from their afflictions here, then they truly convert *miserum fuisse beatum*, into *beatum fuisse miserum*. Besides your Majesties individual happiness in making so right construction of your precedent affections, and the advantages you have acquired by your severe education therein; your Subjects (like men who have been long sick, will better learn to esteem health) from their many sufferings in your absence, will for the future learn to set a truer estimation upon your Prosperity and Presence. And may the God of Peace, the God of Mercy, and the God of Justice, so Crown the antecedent adverse fortune of You, Sir, the most Peaceable, the most Merciful, Just, and best of Princes, that being as Good and Just as *Trajan*, and as Devout and Religious as *Constantine* the Great, or *Theodosius* the first, you may be of your Subjects as beloved as was *Augustus*, and the Arbitrator of Christendom, as well as Defender of the Christian Faith: And when this your Diadem shall descend to your next Heir, you may then assume a Celestial one, which shall never be subject to time, variation, or chance: Which is, and always shall be the daily Payer of,

SIR,

Your most Devoted,

and most Obedient

Subject,

ROGER COKE.

# OBSERVATIONS

UPON

Mr THO: WHITE's

## GROUND

OF

Obedience & Government.

Mr HOBBS his Book *De Cive* :

AND UPON

HUGO GROTIUS

*De Jure Belli & Pacis.*

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*Prematur, nunquam Opprimitur veritas.*

*Nulla res magis operæ pretium est, siue ad utilitatem fructuosior, siue ad animi voluptatem jucundior esse potest quàm Iustitia, quâ quidem post Deum Immortalem, rerum omnium Publicarum Fundamenta, nituntur.*

*Corruptio verò optimi, est pessima.*

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By ROGER COKE.

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at the Middle-Temple Gate. 1660.



# THE JOURNAL

OF THE

PROGRESS OF

THE

ARTS

AND

SCIENCE

IN

THE

UNITED STATES

OF AMERICA

AND

THE

WEST INDIES

AND

THE

ISLANDS



TO THE  
READER.



Have often with great admiration considered in my self, how that all men, good and bad, rich and poor, noble and ignoble, have with one voice commended Virtue, and decried Vice; and yet scarce any man in a thousand hath made Virtue the rule or reason of his actions. Nor is it a thing less worth admiration to consider, how that all men generally have not only a natural spight against their Superiors, and are unwilling to obey them, but also a propense desire to attain to Liberty, and do tread under foot all things which may be called sacred, to the attaining thereof; and yet at no time or place in the world, did ever men accomplish it. I did therefore conclude with my self, that not only all Moral Virtue, but Humane Society, did proceed from higher then any humane, or voluntary causes.



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To the READER.

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Nor was that less abhorrent to me, which men in this factious age beg for a Principle, viz. That all men by Nature, or the Law of Nature, are in a like equal condition; and that the Laws of Nature are eternal, and immutable even by God himself: And yet by a continued violence upon these eternal and immutable Laws, men should every where in the world live in Society, or in the mutual offices of commanding and obeying.

Yet did not I so confidently resolve these things, as to exclude what I could argue against them: I therefore did suppose in my self a company of such men, as were in a parity of condition; yet could I never conceive it possible that ever any *Civitas* or Supreme power could be derived or created by them: For either this *Civitas* must be superior to the *Cives* or People that made it, or not: If it were not superior to it, then could it not govern or rule them; for dominion is always placed in the superior part: If superior to it, then was the Creature or Instrument superior to the Cause and Creator, which is most absurd. Nor was it to me less monstrous to imagine, that any thing could give or transfer that to another, which it self hath not; but this people or multitude, who should make this *civitas*, had neither *Jus vite* or *necis*, nor Property seperately nor conjunctly; they could not therefore endue another with that power, which none of them, nor all of them together had, and without which, there can be no supream power which may protect and defend Subjects.

But I did not insist onely upon this, but supposed that the *cives* could make a *civitas*, which should be

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To the READER

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be superior to them, and endew it with a power which none of them; nor all of them had; yet was I no less perplexed then before, who these *cives*, which should make this civil Pact should be? and who should be subject to it? If onely those be the *cives*, who made this *civitas*, and they onely subject to it; then were Women and Children, who were none of the *cives* that made this *civitas* free and independent from it: Nor could all the people or multitude of both Sexes, and all Ages, in such an imaginary state, be the *cives* which must constitute this *civitas* by virtue of the civil Pact: For many must necessarily be so young, as not being *compotes mentium*, they could have understanding sufficient for the doing such an act: And if no Laws oblige Men to their Pacts and Contracts done under such an age, then sure it must be unreasonable, that Children and Infants should be obliged to their act, if they then did it; or therefore obliged, because others had done it, upon whom they had no dependence.

Well, but suppose these men in such a condition to be qualified to do such an act, yet did another doubt arise, which I could no ways salve, *viz.* *Who should define at what age the Men should be, who should constitute this civitas?* Well, I went yet further, I supposed it granted, That it should be agreed at what age Men in such a condition might give up their wills, and constitute a *civitas*; yet was it not in reason probable, that this *civitas* should be of one days continuance: For being formally constituted of such individual *cives*, it could not be of any longer continuance then the cause, *Sublata causa, tollitur & effectus*; but



To the READER.

*Formæ rerum  
sicut numeri  
constant in  
indivisibili.  
They could  
not therefore  
be the civis,  
that did con-  
stitute the ci-  
vitas, and by  
consequence  
no such could  
remain as the  
civitas.*

but the next day, some of the *cives* would be probably dead, and others grown up to be of age, who were none of those individuals which did constitute the *civitas*. Well, but I supposed the *cives* who made this *civitas* to be immortal, and no posterity; yet could not I in reason expect it to be of any continuance; for *cujus est velle, ejus est nolle*, and not onely all just and legal actions, but all Arts and Sciences, may truly and ultimately be resolved into their first Principles, without any diminution to them. The People therefore constant in nothing but inconstancy, could not in reason be expected constant and obedient to their Creature the *civitas* onely, and yet so in nothing else: Besides, I always did believe, and yet do, that all Mens Pacts and Wills must be conformable to the Laws of every place, and where they are against them, then do they oblige no further then to Repentance: Much more therefore ought all mens Wills and Pacts, to conform and submit to the Laws of Nature, and never transgress that; and that all Pacts and Acts of mens Wills made against it, oblige to nothing but Repentance: Nor is there any thing more abominable, then to conceive that the Acts of mens Wills should irritate the Law of Nature, which they say is immutable by God. Hence it is, I conceive, that Mr. *Hobbs*, will not have all men to be of a like and equal condition *lege naturæ*, but *jure naturæ*; and therefore most absurdly makes *jus naturæ*, to be contrary to *lex naturæ* (and yet oftentimes in his *Preface*, and *Cap. 8. Art. 10.* confounds *jus* with *lex*) and that the Acts of mens Wills, to make them in a better estate then God hath made them, should

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To the READER.

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should be the Law of Nature, or of God: Whereas on the contrary, If no man that ever was born in the World, which was not a *Posthumus King*, but was born in subjection, not onely to his Parents, or as a Servant in a Family, but to something superior to these; then cannot the will of that man, nor all the men in the World, alter or make that man in another condition then that, whereof neither any act of his will, nor the will of any man else, was the cause.

But yet did not I conclude things, onely as I was an intellectual or rational Creature; but being a Christian, I submitted all my Reason and Understanding to the most high Authority of sacred Scripture, in those plain places which admit of no Controversie, where both in the *Old and New Testament*, the first causes of supream Power are owned to be Gods Ordinance; *By God Kings raign, and Princes decree Justice*; and there can be no power but from above, *Joh. 19. 11.* And all power is in relation to something subject to it. Rom. 13.  
Prov. 8.

But because I would not seem to see only with mine own eyes, I desired yet to be better informed of these things, and from whom better then Mr. *Hobbs*, and *Hugo Grotius*, (Men no doubt of as eminent learning and parts, as any this last Age hath produced) these Men both derive their *civitas* from such Principles, as is before spoken of, *viz. From the Pacts and contracts of Men in a parity and equal condition*; but so far was I from being convinced, that (if I understand them aright) I was amazed to see such inconsistent and impossible things to come from Men, otherwise so learned.

For



To the READER.

For though Mr. *Hobbs* does lay down his Principles, and persue his method much more clearly then *Grotius* does; yet his Principles are so monstrous, That to me it is impossible any ingenuous Man should assent to them. Indeed if Mr. *Hobbs* would have supposed, that the state of Man had been either in Society, or out of Society; and that, out of Society, Men had been in such a state as he makes them, in his state of pure Nature, I should never have stumbled at it: But, he forsooth, requires it for a Principle, *That all Men jure naturali, are in a parity and equal condition, and may kill one another without any offence or sin; and that Men continue in this estate, until by their civil Pact, they oblige themselves to one another, that the will of the civitas shall be the will of them all.* Notwithstanding this, I must needs say of Mr. *Hobbs*, That if Men have so little understanding, as to make *Jus naturale* to be contrary to *Lex naturalis*, and so little grace as to believe that the *civitas* hath all its power from the Pacts and wills of Men, and yet impossible to command any thing contrary to the Law of Nature (which he says is the Law of God) and tyranny to be onely *ab exercitio*, when as it is impossible for Kings to command any thing contrary to the Law of Nature; and all Faith and Ghostly Power which our Saviour left in his Church, to be instrumental and subservient to it; and never look how little he understands a Pact, or from whence Men become obliged to it; the *cives* of this *Utopia* may do well enough.

If I edified but little by Mr. *Hobbs*, yet I received much less satisfaction from *Grotius*; for Mr. *Hobbs*

Yet thus much I will tell Mr. *Hobbs*, he may as well suppose a Brute, an intellectual or rational Creature; or a man, no intellectual or rational Creature, as no sociable, or out of Society.

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To the READER.

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Hobbs defines his terms so clearly, as to me, he was easily understood; whereas all *Grotius* his Principles are so perplexed, and equivocal, that it is not possible for any Man to understand any thing clearly from him. As the first thing in his *Preface*, he confounds, is, *Societas & Communitas*; whereas *Societas* is as different from *Communitas*, as black is from white; *Societas*, according to the definition of *Aristotle*, being *Unum quid ita constans ex diversis personis, ut sit unum quod imperet, alterum quod pareat*. Society is one thing so made up of divers persons, that one may command, another obey; Whereas community is, where any company of Creatures are, without the offices of commanding and obeying. § vi

Well, but having got out of his *Preface*, after some Propositions of his Method, &c. he in the Tenth Paragraph of the First Chapter of the First Book *De jure Belli & Pacis*, defines *Jus Naturale* in a tedious general thing, to be *dictatum recte rationis*, &c. and this to be the Law of God; and about the middle, to be immutable by God himself; and towards the latter end, to continue but for a certain space; and towards the beginning he makes the Dominion which is now in use, to be brought in by the will of Man, and this to be *Jus Naturale* too. Now let any ingenuous Man judge, what can be clearly deduced from *Jus Naturale*, which is the Law of God, and immutable by God; and yet to continue but for a certain time, until a Dominion brought in by the will of Man, should abrogate what was immutable by God; and this Dominion thus brought in against this *Jus Naturale*, to be Pol. lib. I. cap. 5.

b Jus



To the READER.

*a Scientia est actio, ars est effectio. Eth. 1.6. c.4. Both begotten by right Reason. Ars est habitus ad faciendum idoneus cum vera ratione conjunctus.* Jus Naturale too. If I have slandered *Grotius*, let any Man see the Paragraph aforesaid.

It was to me an admirable thing to consider, that men so learned, should one of them define the Law of Nature to be *Dictamen rectæ rationis*, the other *Dictatum rectæ rationis*. Well, I will therefore see what *Ratiocinatio* is, and what *Dictamen*, or *Dictatum rectæ rationis* (which is the same thing;) and whether this can to any ingenuous man be any probable definition of the Law of Nature.

*Aristotle, Eth. Lib. 6. Cap. 3.* makes *Ratiocination*, and by consequence every dictate of Reason, to be from Universals; and that there are some Principles which do constitute the *Ratiocination*, of which there can be no *Ratiocination*. These Principles for which no Reason can be given, and yet the reason of all those things which can be deduced from them, are called *Axiomata*, *Dignitates*, or *Communes Notiones*; and from these, men by *Ratiocination* or Right Reason, do infer Arts and Sciences<sup>a</sup>: Nay, all *Ratiocination* or Right reasoning whatsoever, may be resolved into somewhat which is superior to this *Ratiocination*; for which no reason can be given\*.

Well, but let us suppose the Law of Nature to be the dictate of Right Reason, and see the consequence. Every dictate of Right Reason, is of less Dignity, Authority, and Excellency, then the Right Reason, viz. The Effect, then the Cause: But *ex hypothesi*, the Law of Nature, viz. the Law of God the Creator, is the dictate of Right Reason. Therefore is the Law of the Creator, of less Dig-

*Philosophers. understand those things which immediately proceed from God; and the Law of Nature could not be the Law of God, if it did not immediately proceed from him; but the Law of that thing from which it did immediately proceed; the Law of Nature therefore is a Principle.*

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nity, authority and excellency, then the faculty and attribute of the creature, viz. Right reason; then which what can be more monstrous and blasphemous?

Nor is this definition less ridiculous, then impossible and blasphemous: For the dictates of Right reason are understood by one man, and not by another; and may be learned and taught. Suppose now, one of these Masters of Reason should come to the most plain and ignorant man in the world; (who is *compos mentis*) and tell him, he would instruct and teach him the most excellent dictate of Reason in the world, viz. *That there is one God infinitely good, who is to be worshiped and served by man; And that this God requires of every man, that in that state wherein he hath made him, he would not willingly do that to another, which he would not have done to himself*: would not this poor ignorant man deride this Master of Reason, and tell him, he knew this, as well as himself? But suppose he should be so impudent as to deny this; since *Grotius* is not in case, I would desire Mr. *Hobbs* to prove it, or give a right reason thereof, and learn this man his Dictate of Right reason:

Well, but let us see whether this Canting thing be worth the name of a Definition: *Omnis definitio, est exclusio æquivoci*. If the Law of Nature be the Dictate of Right reason, then does the Law of Nature exclude every thing else from being the Dictate of Right reason; or this cannot be the definition of it: I would know now of Mr. *Hobbs*; whether all Arts and Sciences, and Prudent actions, be the Laws of Nature, or not? If they be the Laws



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To the READER.

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of Nature, then is every Inscientifical and Imprudent man, an Unjust man. If they be not the Laws of Nature, and so not the Dictates of Right reason, then let Mr. *Hobbs* shew what else does dictate them. Nor is Mr. *Hobbs* less happy in defining a *Pact*, upon which he grounds his *Civitas*. It is just therefore that this man, who (*Cap. 18. Art. 4.*) makes all Science to be from Definitions only, or Subjects without Predicates, (without which it is impossible there can be a Proposition) and all Science to be from the memory (which is common to all Beasts, as well as Mr. *Hobbs*; for so the *Oxe knows his owner, and the Ass his masters crib*, it being only retained in the memory) excluding the Understanding, should so rashly define things, and understand them no better.

*To believe there is a God to be worshiped and served; and that no man should wilfully, in that state and condition wherein God hath made him, do that to another, which he would not have done to himself; is that Law which God hath engraven in the mindes of all mortal men, wise and unwise, learned and ignorant, noble and ignoble, in their wits, and is the foundation and basis of all Humane society: And this is that first and universal cause, from which all moral virtues (the dictates of Right reason from this cause) do more genuinely and naturally flow, then any Proposition in Geometry does from the Axiomes or Principles of it: For what man is there in this world, of what estate and condition soever, but desires not to be wronged and injured? Let not him then in that state, wilfully wrong or injure any other of what estate soever. If he be a Subject, and desires to be*

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be protected in his life and fortune, by the Laws of his Country, from the violence and oppression of other men; let not him abuse or violate the Laws of his Country, to the wrong or oppression of another: If he desires every man should keep promise, and do justly by him; let not him break his word, and deal unjustly with another. Is he a King? he would not willingly be disseised or oppressed by another; let him not therefore disseise or unjustly oppress another. Does any King desire not to be invaded or oppressed by his Subjects? let not him therefore oppress his Subjects. If he had been a Subject, he would have desired protection from his Prince, by an equal and moderate distribution of known Laws; let him therefore equally moderately govern his Subjects by known Laws. And from this Law did always men desire, though ignorant of the manner, to worship and serve GOD, although they misplaced the Deity in the *Sun, Moon, an Oak, Apollo, Jupiter, &c.* And this is that Law which shall judge and condemn the immoral actions and vices of men, in all Ages, especially in this latter Age, because they sinned against the Light or Law of Nature, engraven in the minds of all men.

Now whether these men being Christians in name, yet having cast off all Christian society, and not being of any Christian church or religion that I ever heard of, should not be content here; but (although they scarce agree in any thing else) proceed so far as to make the Laws of God subject and depending upon the reasons and phantasies of men; and not to tell them where their reasons shall begin,  
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if not at the Laws of God, but every man left to go a whoring after his own inventions? For what can then restrain man, where his Reason is become superior to the Laws of God? and to make all humane society to have its origination from the pacts and wills of men; have not been as great enemies not only to Christian religion, but also to all humane society, as the malice of the Devil could invent, let any sober unbiaſſed man judge? or if all the confuſions and diſtractions in Chriſtendom (to the ſhame and ſcandal of Chriſtianity) have not had their origination from this pretence? Nor hath this ſenſleſs reſolution of all things into Reason, ended only in the diſtractions of State, but alſo been the firſt ſource and fountain from whence all theſe diſtractions and confuſions in the Church have ariſen, without any poſſible hope of ever reconciling them, where theſe principles are continued. Hence it is, that the venerable and higheſt Authority of the ſacred Scriptures, are become the ſubject of all Tavern-diſcourſes; and every man that ſcarce underſtands any reaſon, muſt (forſooth) have a reaſon given him, why the Scriptures are the Word of God. And yet in all other Authorities whatſoever, men will deride the folly of others, who go about to prove them by Reason; for Reason is begotten alwaies from Authorities and Principles, and therefore cannot Authorities and Principles be begotten from Reason.

I have been often almoſt aſtoniſhed to conſider, how ſuch ſenſleſs, blaſphemous, and ridiculous things ſhould meerly from the authority of the Aſſertors be impoſed upon, and received by the world without con-

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To the *READER*.

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contradiction ; whereas narrowly looked into, one would scarce believe the Authors had ever understood Logick, or one leaf in *Aristotle*. And for my part, if I could not ultimately resolve the Dictates of my Reason as a Christian, into plain places of Scripture, so well as any Geometrician could any Proposition of Geometry into the Principles of *Euclids* Elements ; I would be content to let them wander for ever without any termination, rather then admit them (the Scriptures) to be a creature of a creature, and the subject of every wild phantastical conceit and opinion. And if I could not ultimately resolve the reason of all my moral actions as a man, into the Law of Nature which God has engraven in mens minds, and not into the wills of men ; I would be content to conclude with *Carneades*, that men have at divers times established several Laws for manners, and by them have been often altered, but that there is no such thing as the Law of Nature ; and that all men, as well as other creatures, are naturally carried to their profits. And so there is no such thing as Justice ; or if there were, it were the greatest folly, because men by endeavoring the good of others, prejudice themselves.

Since the *Grecians* and *Romans* were the first, who in the world did make all power to be from the People ; I suppose that Mr. *Hobbs* and *Grotius* took their Principles from them. Let us see whether by the People they understand the same thing with the *Romans* and *Grecians*, or the same thing with one another. By the People of *Rome*, or *Athens*, the *Romans* and *Athenians* understood them, and them only, who were *civitate donati*, and not men born  
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in a promiscuous rout and parity, without all order and subordination; but made so by violent usurpation. By the People, Mr. *Hobbs* understands the King or Court governing. By the People, *Grotius* every where (I believe, for he no where that I can find, defines the People) understands the Subjects governed, and they who in a parity or equal condition constituted the *Civitas*.

Upon these and many other considerations and observations upon them, I was so far from being convinc'd, that I became much more firmly established then before in my Judgment, (for Opinion I will not have of those things, wherein I am possess'd of the constant practice of the world in all ages & places; the plain, undubitable, and uncontrolled places of Scripture both in the Old and New Testament, and no colour of allegation against them from any other places; the Authority of the highest Philosopher; my Country-Laws; and all those Theses and Axiomes upon which almost all Reason and Philosophy are grounded; and these things opposed by such monstrous, feigned, equivocal and silly beggings of the question, which no man, not blinded with faction, or stupid ignorance, can grant) yet had not these Observations become publique, if it had not been upon an odd occasion, which was:

Upon a time being with a Brother-in-law, a Kinsman of mine (at dinner) came to my Brothers; where, in discourse, he asked me if I had seen a Book of *Tho. Whites*, called *The Grounds of Obedience and Government*? I answered no, nor did I desire to see any thing of his doing, having conceived a

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prejudice of the Mans ability and ingenuity. He confidently replied, that I should be convinced, if I did but read it, and that he would send me the book. Yet was I so far from accepting his courtesie, that I importunately desired him not to do it: But he notwithstanding all importunity, on purpose sent his man with it that night to me, being at that time much afflicted with my wonted Melancholy, which became more excited when I had read some part of it: And seeing a thing so senseless and void of all humanity, to be imposed upon the world, (which questionless was intended to prefer some Faction or Interest of his;) and yet forsooth he tells us, it is a second Edition corrected and amended by the Author; (wheresoever therefore I name our *Author*, I mean *Tho. White Gent.*) I did in detestation of the Thing (not of the Man, for I never saw him in all my life) set my self to make these Observations upon it.

He harps upon the same string with *Mr. Hobbs* and *Grotius*, That *all Supreme Power is originally created by Mens wills subject to it*: Yet being a fine Gentleman in *quirpo*, he dances a Galliard by himself, and most senselessly makes men out of society to be a Rational multitude, and to have Property before they had Laws or Government, and to be a People after they had given up their power to another to govern them. But lest it should be objected, that though our *Author* be hood-winked, yet *Mr. Hobbs* and *Grotius* might be very clear-sighted and bare-faced, I thought it not amiss to make these Observations upon them also. As a Preparative to a Purge, I pray (*Reader*) take these few Notes.



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*To the READER.*

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1. First I say, they falsly derive Government : For though they all differ in the manner of it, yet is all Government so far from being so derived as any of them would have it, in the first Institution, that if any of them can shew any one Government so derived since the beginning of the world, I will yeeld the cause.

2. They feign that for a Principle, which never was, viz. *That men by nature are in a parity or equal condition* : For never were men since the Creation, in any age or place of the world, in such a condition. But suppose somewhere in the world it might have been found, that men in a like condition did by their acts and wills form themselves into a Society ; yet is it a most unreasonable thing to conclude from thence, that all power in Government is from the People : For, Singulars are deduced and concluded from Universals ; not Universals by Singulars.

3. The Principle they beg, is destructive to all good manners ; for, Justice is the fountain of all humane Virtues and Morality, (as all Philosophers, and best, and wisest men hold :) And if Justice be the duty which men owe their Superiors, and that it may be truly and ultimately resolved into the first cause, without any detriment or damage to it ; and if all order, superiority, and power in Government may truly and ultimately be resolved into the People, or the wills of the Subjects, or Party governed ; then the wills of the Subjects being the fountain and first cause of all Order and Justice, that is Justice in the People, to do what they list ; then which, nothing can be more destructive to all Virtue, Justice, and Good manners.

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4. It is damnably destructive to Faith; for, *All powers are of God*, Rom. 12. and, *No power can be given but from above*, S. John 19. 11.

Nor were these Men, when they wrote their several Treatises, *De Cive*, *De Jure Belli & Pacis*, and *Grounds of Obedience and Government*, much better in their Religion (if I conceive a right Notion of Religion, viz. That it is *Actus Divini cultus*, or the Publick worship and service of God, in an unity, form and communion) then their Writings shew them to be for Justice and Government. For though our *Author* be a Pretender to be of the Religion of the Church of *Rome*; yet it would trouble the greatest Critique of this Age to shew where the Religion of either of the other were to be found. And who but such men as these, would pin their faith upon the tales and fictions of Poets, before the most venerable and sacred Authority of Holy Scripture? Nor can the eldest of Poets writings be compared in antiquity with the Scriptures: For if it could,

*Cur supra bellum Thebanum, & funera Trojæ,  
Non alias, alii quoque res cecinere Poetæ?*

And the *Theban* and *Trojan* War hapned after the Year of the World 2750. The *Trojan* War about the time that *Jephthah* judged *Israel*; and the *Theban* War in that Age, or the Age immediately before. See *Helv.* and *Sir Walt. Raleigh Hist. World*, lib. 2: cap. 13. sect. 7.

For my part, if in washing off the *Fucus* with which these men have obscured the true causes of all



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To the *R E A D E R*.

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Society, and hath no colour of verisimilitude in it, the truth of all Humane, Christian, and Legal society may more clearly appear from their natural and genuine causes; I shall then not think my time and pains utterly lost, which otherwise I should.

If it be objected, that I have transgressed the bounds of Civility in these Observations upon Mr. *White*; and that such opposing is rather like to increase differences, then reconcile them: I answer, that if Mr. *White* (or at least to my understanding) had not propounded some base Faction or Interest, and not any Good intentions, to have been his end by this Discourse of the *Grounds of Obedience and Government*; Or if he would have been content to have made it his own case only, I should have been content to have taken no notice of it. But since he is not only content to prostitute all Virtue and Morality in himself; and not stay there, but make this publique, and all men who are not of his opinion, not to be <sup>\*Gro. 16. end.</sup> worthy the name of *Men*; sure it is rather to be expected he should be severely reprehended, and his absurdities so detected, that they may be avoided by other men, then to be hoped that ever he should be reclaimed from them.

Note, neither *Grotius* nor our *Author* make any Government, but only *Monarchy*, to be dissolvable: For if the Supremacie be once vested in a many-headed-Beast, be it *Court* or *People*, then are they so sacred and inviolable, that neither of them have one word, in what causes they forfeit their Sovereignities. And though *Grotius* no where so defines the *People*, as any man may understand any thing by it; yet

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yet sure by the People they mean (if they mean any thing) the Subjects of any Prince or State. Suppose therefore that the People may dissolve Government; as oft as they see occasion; yet if the People be *Unumquid*, made up of all the individual Subjects of any Prince, then must the deposing of any Prince, if it be the act of the People, be the act of every individual Subject; which is a thing never done, nor will be unto the end of the world. All *Grotius*, and our *Authors* Necessities and Reasons therefore for deposing of Princes by the People, are meer Cantings, and invented only to nurse up Factions in the World without end, until *Monarchy* or *Regal power* should be extirpated in all the World.

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*Postscript to the Reader.*

THE Edition of *Bodin de Repub.* cited in these *Observations* and *Elements*, is that which was printed at *Lyons* 1586. and afterwards sold at *Paris*.

The Edition of *Grotius de Jure Belli & Pacis*, here and hereafter cited, is that printed at *Amsterdam* by *John and Cornelius Blaeu*, 1642.

The Edition of Mr. *Hobbs* his *Philosophical Elements de Cive*, here and hereafter cited, is that printed at *Amsterdam* 1647. by *L. Elzevirius*.

The *Grounds of Obedience and Government*, by *Tho. White Gent.* is the Second Edition corrected and amended by the Author, and printed by *J. Fleisher*, 1655.

Reader, I confess I have not always cited our Author *Tho. White Gent.* in his very words; but if I have wronged him in the Sense, (there being so very little in the whole Treatise) I acknowledge it a crime unpardonable.

*Generatio Animalium* cited, is that printed at *Amsterdam* by *Lewis Elzevirius*, 1651.







By what means Men attain Arts and Sciences.

I. **N**ihil est in intellectu, quod non prius fuerit in sensu, saies the highest Philosopher, *Anal. Post. 2.* Since only Man is a reasonable Creature, and can by his reason attain to Knowledge, it will not be a superfluous undertaking, to endeavor to shew by what means Men attain to Knowledge; and what Reason is: And since that most excellent Philosopher Doctor *William Harvey* hath taken so much pains, and more subtilly and accurately disputed the manner and order of attaining Knowledge then any Man before him, wee will take him in our way. He saies there is no Knowledge innate in us from the opinion of *Aristotle*, &c. In the next Paragraph he saies, but from whence, and how this Knowledge comes to us. I do not think it will be unprofitable here to set down, as well, to the more perfect understanding of the generation of living Creatures, as also for the removing the doubt, which any Man might have deduced from the opinion of *Aristotle*, for he affirms that all learning and mental discipline is made from antecedent Knowledge; from whence it may seem to follow, either we have no Knowledge, or that it is born with us, which is dissentaneous to what was before.

2. This doubt is afterwards loosed by *Aristotle* himself, where he teaches how Knowledge may be acquired; for after he had taught that all certain Knowledge is to be had from a syllogisme and demonstration, and had made manifest, that every demonstrative syllogisme is made up of prime and necessary principles, at length he enquireth; *Quomodo principia nota fiant, & quis sit notificans habitus*, inquit; simul etiam, *utrum habitus, cum non insint, ingenerentur; an, cum inessent, laterent? Non habemus* (inquit) *eos habitus; accidit enim ut eos qui habent cognitiones exquisitiores demonstratione, lateant. Si vero eos accipimus, cum antea non haberemus, quomodo notum faceremus, & disceremus ex non antecedente cognitione? Perspicuum igitur est, neque haberi, nec in ignorantibus, ac nullo habitu praeclatis gigni posse. Quare necesse est, facultatem quandam haberi, non tamen talem, quae his praestantior sit, tanquam exquisitior. Videtur autem haec inesse omnibus animalibus: habent enim vim congenitam judicativam, quam appellant sensum. Cum autem sensus insit; in aliis animalibus, res sensu percepta manet, in alijs, non manet. In quibus igitur non manet; haec aut omnino, aut eorum quae non manent, cognitionem non habent, extra rō sentire: alia vero cum sentiunt, unam quid in anima retineant. Cum autem multa animalia hujusmodi sint, jam est discrimen quoddam;*

Of Humane reason, and the manner of acquiring Knowledge from *Aristotle*; and Doctor *Harveys* opinion.

*Prof. Gen. Anim.*

Page. 25:

*Analys. Post. Lib. 1. tit. 1.*

16. Lib. 2. cap. ult.

By the opinion of *Aristotle*.

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adeo ut in aliis ratio fiat ex huiusmodi rerum memoria; in aliis, non fiat. Ex sensu igitur fit memoria, quemadmodum dicimus: ex memoria vero saepe ejusdem rei facta, fit experientia. (multa enim numero memoria, sunt una experientia.) At vero ex experientia, sive ex omni & universali quiescente in anima (nimirum uno prater multa, quod in omnibus illis inest unum & idem) fit principium artis, & scientia: artis si pertineat ad generationem; (viz. agenda, vel efficienda;) scientia, si pertineat ad id quod est (viz. cognitionem entis.) Itaque, nec infant definiti habitus; nec sunt ex aliis habitibus notioribus, sed ex sensu.

By the opinion of Dr. Harvey.

3. From which words of *Aristotle* it is clearly manifest, by what order the Knowledge of every Art or Science is acquired, viz. from the sense the thing perceived remains still: from the permanency of the thing perceived, comes the memory: from the memory multiplied, experience: from experience, *ratio universalis, definitiones, & maxima sive axiomata communia, cognitionis certissima principia ex gr. Idem eidem, secundum idem, esse, & non esse, impossibile. Omnis affirmatio, vel negatio, aut vera est, aut falsa; & huiusmodi alia.*

Wherefore as we said before, there is no perfect Knowledge, which may be called ours, which is within us; unless by some means it does proceed from experiment made by us, and our sense; or at least, by these examined, proved, and firmly builded, it may appear above any pre-existent Knowledge in us. Because without memory there can be no experience, which is nothing else but multiplied memory: in like manner memory cannot be, without permanence of the thing perceived: and the thing perceived cannot remain in what it never was, &c.

Apology.

4. But *multi multa, nemo omnia vidit*. I do not think that all light of understanding was so shut up in *Aristotle's* braine, that all things pronounced by him, are to be taken for granted Principles; yet do I entertain so venerable an opinion of *Aristotle*, that I do admire him, as the most eminent of all men, in all humane learning, among the Ancients; and not to be paralleled by any of the Moderns: but *inventis addere*, is one of the chiefeft ends of Mans being; and there are yet, and so will be until the end of the World, many things received for truth, which upon more search will be found but verisimilitudes; and infinite things hidden from our Forefathers, which will be infinitely found out by the present and subsequent generation; that the Infinity of God may appear, as well to the present and subsequent age, as to the antecedent, in all his works.

All things were not in the senses, before they are in the understanding, according to the opinion of *Aristotle*, and the Doctor.

5. Well then, *Aristotle* saies, and the Doctor subscribes to it, that *Nihil est intellectu, quod non prius fuerit in sensu*. I deny that there is nothing in the understanding, which was not first in the senses: for there are many things intelligible, which are not sensible; as time does, every article of it, intelligibly pass away, not sensibly. I understand that the centre of a circle, is a point; and that a point, by the definition of it, *est cujus nulla pars est*; it cannot therefore according to the true definition of it, be so expressed, as to be the object of sense. So a right line is *longitudo, latitudinis expers*; but neither a right line nor a point can be truly represented to the sense, according to the truth of them, as they arise in the understanding; and so two right, or supposed right lines, which are not parallel, cannot be infinitely produced according to sense, but they will cut one another; but intelligibly they may; for no Man can understand so small a quantity of distance, before the interfection, but I can understand

stand a smaller, and another smaller then that, and so *ad infinitum*; and so *Quantitas divisibilis est in semper divisibila, & potest infinite augeri, & minui*; but this is only intelligibly, it cannot be actually or sensibly done; and so the *contactus* of a right line with a circle, is a point in the understanding, and not sensibly; and so is the touching of two circles, either within one another, or without. Nay, neither Art, Science, nor any rational production whatsoever *a priori*, but must necessarily be in the understanding before it can be in the senses. I understand Animal to comprehend not only the Creatures I have seen, but all those which are, were, or ever shall be; and so I understand things equal to a third thing, are equal to one another; yet nor I, nor any Man else ever saw two things equal to a third; and the whole body of Geometry is of all Sciences most intelligible, and yet abstracted from all sensible matter.

6. If it be true that both Aristotle and the Doctor affirm, that all Art and Science is acquired from the receiving a thing into the senses, and that from the permanence of the thing in the sense the memory is made; and from the multiplication of the memory, Experience; and from Experience, the Principles of all Art and Science, and that it be true which Aristotle saies, to which the Doctor subscribes, *Fit ex memoria, experientia hominibus: multa etenim ejusdem res memoria, unius experientia vim efficiunt. Quare experientia pene simile quid scientia ac arti esse videtur*; then does it most evidently and perspicuously follow, that he that can longest retain things in his sense, that is, hath the best memory, is the most scientificall, and most artificial Man: whereas we daily see that the Man that hath the greatest memory, is usually a very blockhead, and that he remembers almost all the things which are done and said, yet cannot tell from what cause they did proceed, but only remembers the things. Nor will that which the Doctor saies, *Quippe sine memoria, nulla fit experientia*, mend the matter: for as I do deny any Art or Science can proceed from the sense, memory and experience; so do I not affirm that without the memory, any Art or Science can be made. I say no Art nor Science can arise from the apprehension of singulars into the sense, and retaining of them there, and from experiment only. For Arts, and Sciences, are not things meerly apprehended, and received into the sense, and so retained in memory, but something else which is truly and rightly derived from those things, which are universally true, and never before known to the senses, or remembered.

No Art or Science arises from the Senses and memory.

Meta. I. l. c. I.

7. And as all the particular stories and things in the world retained in the memory, cannot move one step to the attaining of any Art or Science; so cannot the apprehension of universal causes in the understanding, of themselves produce any thing in order to the attaining of any Art or Science. For universal causes in nature prove nothing; but as meeting particular causes, do determine those, and specify their Acts. The truth of both these is easily and daily seen in Men, who are very dull, and yet of vast memories; who remember all things, but can scarcely be ever made to discourse of, and understand any thing; and of Men that are too light, and phantastical, who only talke generally, without applying these generals to any particular. The one is like a Ship, which is overladen with Ballast, and not having Sailes proportionable, can scarcely be made to saile with any winde: the other is like a Ship which hath no Ballast, and so much saile, that she is never in any steadiness, but carried hither and thither upon every small puff of

Nor from the understanding without the memory and senses



winde, the one will upon any discourse or ratiocination, be still absurdly telling particular stories, which he in his defect of understanding, supposes should be the universal and prime reason of the discourse : whereas the other from the lightness of his phantasie, and defect of memory; never applies his general notion, to any particular thing, and so concludes nothing.

Axiomes and Principles do not proceed from experiment,

8. Whereas *Aristotle* and the Doctor affirm, that experiment proceeds from many memories, or memory multiplied, and that ratio universalis, definitiones, &c. proceed from experiment. A Man may justly deny it, for it is not many things, or multiplied things, which can make ratio universalis; but ratio universalis, axioma, &c. is that which does not signify many things only, but every thing which is comprehended in the terms; and it is impossible that any Man should make experiment of all things, which are comprehended under one general Notion.

Nor Art and Sciences. Met. lib. I. c. I. an finem. (b) Apud Plat. in Gorgia.

9. *Aristotle* saies, *Per experientiam ars, & scientia hominibus efficitur, Experientia enim (ut recte ait Polus<sup>b</sup>) artem efficit, imperitia vero casum*, to which the Doctor subscribes, and saies, there can be no prudent or truly knowing Man, which by his proper experiment, hath not thoroughly understood a thing to be so.

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If this were universally true, then could no wise or prudent Man understand thoroughly any Law which forbids Theft or Murder upon the penalty of hanging; unless he should steale and commit Murder, and so be hanged for his pains: and for my part I will rather believe that if a Man puts his finger into the fire he will burn it; and that if he be long over head and ears in the water, he will drown himself, then make experiment thereby to be accounted a wise and prudent Man. Afterwards he saies, *From hence it is (viz. for want of experience) many pretenders to knowledge, and Sophisters cropping of the inventions of other Men, the same things every where (the order only, and words changed, and a few things of small moment added) do confidently challenge for their own; and render Philosophy, which ought to be certain and perspicuous) obscure, intricate, and confused.* It is true, that in all argumentation a posteriori, viz. from the effect to endeavor to find out the cause, there can be no direction without experiment; and therefore it is a very difficult, if not an impossible thing, that any Art, or Science, can be made from any conclusions in Philosophy which are drawn a posteriori, which at the best cannot arise to higher then probable, and opinonative, and can never be certain and perspicuous. And though the Doctor from his great parts and experiment in Anatomy, hath probably found out things never before received; yet cannot any of those conclusions ever attain to demonstrative certain and perspicuous conclusions: yet it does not hold true in argumentation a priori, that all things are known by experiment; but that infinite things are known and understood, which are abstracted from matter and experiment, and are easily understood by any Man without experiment.

Man is not naturally without all Knowledge.

10. Nor is it true universally, that there is no knowledge innate in Man; for the Laws of Nature are innate and connatural with Man; and not acquired either by sense, experiment, or any thing else.

The manner and order of attaining to Knowledge, is a subtil disquisition.

11. As I have said before, so do I say again, that there is no Age that hath not received many things for truths, which the next generation upon further inquiry, and looking into them, have found to be but verisimilitudes: and that from things found out, infinite productions will be made as long as the world indures: and as it is not fair play to carp at anothers opinion and,

and not to set down his own, and give a reason for it. So will it be meer levity to contest with another, it not upon superior Grounds; and he that shall contest with so great a Philosopher, as *Aristotle*, in a thing so long received, and uncontroverted, had need take great heed, and have his wits about him, least instead of evicting his adversary, he only acquires the repute of a light and foolish Man; But least we should skip short for want of taking our run far enough back, we will begin at the beginning of all things.

12. As I am a Christian, and therefore by the First Chap. *Gen.* ought to believe, that God made Heaven and Earth, Man and all other Creatures; so if I had not received Gods divine revelation of himself in the Scriptures, yet should I never have been a Peripatetic, or Aristotelian, who held that not only the world, but the species of all things in it, were from all eternity. For there was either one first being, the true, prime, and efficient cause of all things else, or two, or more first beings, or no first being, but all things were originally from themselves: but the two latter are most manifestly absurd and contrary to sense and reason; for *unitas est, secundum quam unumquodque eorum, quæ sunt, unum dicitur*; but the first is one thing; it is therefore impossible there should be two firsts or more; nor is it less absurd to suppose all things to have been from eternity, and so not to have proceeded from one superior being, but had their being from themselves; for if all things had from all eternity a power and being of themselves, then might they have infinitely continued their being in their individuals; and we see that every thing does naturally desire the preservation of its self; but this is most manifestly false, for we see all things are in their individuals resolvable into their first composition, and perpetuated by generation in their species; there is therefore but one first being of all things (except sin, which is contrary to the nature and essence of God, who is all good) which is God.

There is but one first Entity, and that is God.

13. All things were either originally generated of their like, or from themselves, or created by God. But nothing could generate any thing like it self before it was; and by the precedent proposition, no Creature could have its original being from its self. All things therefore in the beginning were created by God, and are his Creatures.

God in the beginning created all things.

14. It is true, that the Scriptures do not observe an exact method in relating all actions according as they were done in time; but it is very probable that *Adam* at his first Creation gave names to all Creatures, *Gen. 2.20.* But whether it were at *Adams* first Creation or not, yet could not *Adams* speech and defining all Gods Creatures, be from any acquired habit, because there was no Creature with whom he might converse and beget this habit, (*Eve* not being then made) nor did *Adam* only give names to Creatures; but did discourse Rationally, and give the Etymology of Woman, when he first saw her. *Gen. 2.23.24.* Man therefore was created an intelligible and Rational Creature, actually.

Man was created in his perfection, and an intelligible, and rational creature actually.

15. Although Man were created a most perfect, Rational, and Intelligible Creature; yet we see, that he is not only born actually void of understanding and reason; but also the most impotent of all Creatures. For all viviparal Creatures (although born blind privatively) yet in their very first production find a way to their dams papps from whence they suck and receive nourishment; whereas Man of a long time after his birth (so long time, that many other Creatures in less time attain to their perfection) is unable to receive any nourishment, but as he is directed by others. And all oviparal Creatures without any help,

Man of all creatures is born the most impotent.



receive that food which their Parents bring them; and all Creatures which are generated *per metamorphosin*, are at their first being as perfect as ever after.

Wherein Man  
and other  
more perfect  
creatures do  
resemble one  
another.

16. I understand by *Animalia perfectiora*, or more perfect Creatures, those who are generated and produced from univocal generation or production, that is, from the coition of male and female of the same species. Man, and all more perfect creatures, are born with all the five senses of Hearing, Seeing, Smelling, Tasting, and Feeling; and also with Will, Memory, and Phantasie. And though by reason of Creatures natural impotency, at their first production, these three latter are not so perspicuous, as to be perceived by them who do not carefully mind them; yet it is evident enough to those, who more narrowly observe them: For there is no Creature, at their very first production, which either of themselves, or apted and disposed to receive food, but do receive it, (if it hath no natural defect or sickness) which it could not do without Will: And all Creatures know, and can distinguish the lowing, bleating, barking, and voice &c. of their Dams, or those that feed them, from others of the same kind; which could not be without Memory: And not only Children in their cradles will (excited by others) laugh and be pleasant, but also of themselves will many times express much pleasure in their faces; but also Lambs, Colts, Calves, &c. will be playing with one another, all which no doubt proceeds from some pleasure which they fancie. They have moreover at their first being, the passions of Love, Fear, Hate, &c. which is so evidently seen in all Creatures, that there needs no example. And truly I think it very probable, that it is from Fear, that every Child cries, upon his being born, apprehending danger from those various new things it never saw before.

Wherein Man  
is different  
from other  
creatures, and  
more excel-  
lent.

17. Although other Creatures have in their first being, as well as Man, all those Senses that Man hath, and have moreover Will, Phantasie, and Memory; yet are their actions determined by their objects, when they are not overruled by fear; nor in process of time do they ever attain to be intelligible or rational Creatures. It is worth the observation, that while Man does in some sort attain to speech, understanding, and reason, he can either not go, or else goes upon his hands and feet, with his face prone to the earth, as if there were no difference between him and other Creatures; whereas when he but begins to speak, and can in any sort observe the commands of his Parents, he then begins to look up to Heaven as a more excellent Creature, and that from thence he expects beatitude, and is to be thankful therefore. And though other Creatures have Phantasie as well as Men, yet cannot they phancie any object from their Senses so intelligibly, as to define it to be such a thing in all the parts of it, excluding every thing else. Nor can they by the help of their Memory and Phantasie, ever draw one Conclusion from any thing they ever saw, and phancied.

What is the  
Will, accord-  
ing to the  
Schools.

18. *Estius* in *Disposit.* 17. of the 3. Book of his *Comment of the Sentences*, p. 49. *sect.* 2. acknowledgeth a twofold will in Christ according to humane nature; one rational, which is proper to man, conformable to the Understanding; the other sensual, and is called Sensuality, and common to all living creatures, conforming to the Sense. And although only the rational appetite be properly called the Will, yet sometime the name of Will is attri-

attributed to the sensual appetite. As *Joh. 1. & Ephes. 2. Voluntas carnis dominatur.* And *Prosper* in the first book *de voc. Gent. cap. 2.* besides the rational will, acknowledgeth a sensual will: So writing: *Sensualis voluntas, quam & carnalem possumus dicere, non erigitur supra eum motum, qui de corporis sensibus nascitur: qualis est in animis parvulorum, qui licet nullo judicio utantur, ostendunt tamen aliquid se velli, cum sentiendo & ea quibus delectantur amant, & ea quibus offenduntur oderunt.* And afterwards from the places of Scripture which testify our Saviours grief, sorrow, and fear; these passions being sensitive, do sufficiently convince that there was a sensual will in Christ. In *lib. 2. distinct. 6. pag. 51. a.* he from *Scotus* distinguisheth a twofold will, absolute, and conditional; or *voluntas efficax, & complacentia. Voluntas complacentia*, is that will, by which men desire what they cannot attain to; as when who is sick, desireth health, when it is not possible to attain to it. *Voluntas efficax*, is that, which by such means attains the end. And *lib. 2. dist. 24. pag. 261.* he says truly, *Voluntas cogi non potest.*

If *Appetitus sensualis* be the Will, then is the Will compulsible; for not only the Appetite, but all the outward Senses are patient, and therefore compellible; which is contrary to what he affirms, that *Voluntas cogi non potest.* Rejected.

If *Appetitus rationalis* be the Will, then are those actions for which no reason can be given, of Anger, Desire, and of all Children, unwilling actions; which *Aristotle Eth. 1.3. c.3.* justly derides as most ridiculous and absurd. Besides, *Appetitus rationalis* are terms incompatible; for neither Man, nor any creature, does *appetere rationaliter*, but *naturaliter*. Mr. *Hobbs* makes *Appetitus rationalis* to be the Will, too.

19. *Aristotle 1.3. c.3. Eth.* makes the Will the *πρὸ ἐξουσίας*, to be that principle or beginning in him, who does not ignorantly those singular things in which any action consists. And that therefore Children, and other creatures void of reason and understanding, have will, and do things spontaneously.

What is the Will, the *πρὸ ἐξουσίας*, by the authority of *Aristotle*, in creatures void of reason.

20. Counsel, in *cap. 4. & 6. lib. 3. Eth.* he makes to be neither *Cupiditas*, *Ira*, *Voluntas*, or any Opinion. *Voluntas* he makes to be of the last or end of Counsel; and Counsel to be of those things which may be done by us; as a man wills to be well, he takes counsel how to attain to health. And he is a fool, that takes counsel of those things he cannot do. Yet a man may will things which cannot be, as to be immortal; or those things which he cannot do, as if a man would have a Player, or Wrestler stronger than himself, to depart. But this Definition, if it be any, is so perplex and confused, as it is not possible a man should definitely understand any thing by it: For if the Will be the end or termination of Counsel, then all those actions which do not proceed from Counsel, are not voluntary. But he makes the Will to be of those things, of which we cannot take Counsel. So that he does not only confound *Appetitus*, *Cupiditas*, & *Voluntas*, but makes *Voluntas* to be contrary to its self.

What is the *Voluntas*, Will, or *μεγαλειότης*, by the authority of *Aristotle*.

21. The Will is that Faculty, Empire, or Dominion of the Soul, which does not ignorantly imperate, or forbid any action or motion which is not natural. I say not ignorantly: for those actions which oppress men by disordered dreams, or by the *Incubus*, or (as we say) the Night-mare, are not acts of the will. Nor must they be natural, as is the *Systole* and *Diastole* of the Heart and Blood, or of the Brain, which is natural, and not in our power

What is the Will.



to alter. But though the Will cannot forbid the Brain or Phantasie from working, yet can it imperate the Phantasie what things it shall phancie or meditate.

Another definition of the will.

22. In every action three things are to be considered, viz. the *internum movens*, the *externum agens*, and the end or *ratio finalis* of the action. The *internum movens* is the will, the prime and efficient cause; the *externum movens*, the mean or instrumental cause; the *ratio finalis* or end for which such an action is done, is that which discerns the action to be good or bad, just or unjust. If the end of the action be to attain any thing which the understanding or reason dictates, then is such an action the act of the mind, which is proper only to intellectual and reasonable Creatures. If it be to attain something desired or feared, and for which no reason can be given, then is it common to all living Creatures as well as Man.

Another definition of the will.

By *Appetitus*, I mean all sensual desires of self-love, lust, revenge, &c.

23. Or thirdly, the Will is that faculty of the soule which does elect or reject the doing of things appearing just or unjust, desired or not desired, prudent or imprudent. So that *voluntas* is one thing, and *appetitus*, or *cupiditas* is another thing; and so *velle* is one thing, and *intelligere* another. For *appetitus* or *cupiditas*, are natural and not in the power of the will; but the doing or not doing of any thing, to the attaining of things coveted or desired, is in the power of the will; and so many Men do understand many things to be good for them, who do nothing to the attaining of them, viz. many Men are sapient, not prudent. Thus we see that all Men do understand and desire happiness, but all Men do not will, viz. do things in order to the attaining of happiness.

A fourth definition.

24. Or lastly, I am content with *Aristotles* definition of the will, *Eth. 3<sup>1</sup> cap. 4. & 6.* That it is the ultimate resolution, end, or determination of counsel; but it is not only so, but the ultimate resolution of those acts, ends, or determinations of passions, irascible, concupiscible, or fearful, of Creatures not mad, but knowingly doing them. The natural passions therefore of concupiscence, appetite, anger, or fear, are no sins, because it is not in the power of Man to avoid them; but the assenting to them, either by complacency of cogitation, or by determining or resolving to do any thing in order thereunto, is a sin; and this the Poet by the help of humane nature only, saw:

*Juv. Sat. 14.*

*Nam scelus intra se tacitum qui cogitat ullum,  
Facti crimen habet.*

The will in reasonable Creatures illustrated by an example.

25. The Council of a Prince are divided and propound several things to him; the Prince who is the will, assents to, or elects the advice of one part, and rejects the other; the passions or affections to propound such a thing to the will, to be done or not done, because desired or feared; the understanding and reason, judges the doing or not doing such a thing, to be unreasonable or unjust. Here a Man may see, the understanding, the appetite, and fear, but not the will, until something be assented to, as understood to be good or bad; or desired, as pleasant, or profitable, or feared. So that the reason and understanding is one thing, and the affections and fears other things, and the will different from them all.

Creatures irrational have a will.

26. The *internum movens*, being the will in all actions not natural, nor ignorant, all those outward actions of all Creatures must necessarily proceed from the will, or *internum movens* in them.

27. Not

27. Not onely *appetitus* but *sensus*, are patient and natural in all Creatures; if therefore *appetitus sensualis* be the will in irrational Creatures, then could not these Creatures do any thing, but first moved thereunto by their sensual appetite; but the contrary hereof every man sees. *Trajan* had a Horse given him in *Persia*, who at first sight of the Emperor, fell upon his knees. It is almost incredible those things which *Banks* his Horse did, and yet none of them from any sensual appetite. Thus we see all irrational Creatures may be taught and habituated to those things which naturally they have no appetite unto, nor moved by any outward object: As Horses are ridden, and learned to amble, whereas naturally all four-footed Creatures trot; yet have they naturally no appetite thereunto, nor moved by any outward object, but on the contrary are averse from them.

*Appetitus sensualis*, is not the Will in Creatures irrational.

28. Creatures void of Understanding and Reason, have these two Passions to inform their Will, viz. *appetitus* & *timor*; and that they take information from both these, is evident to any man; for there is no Creature that pursues any Appetition, but apprehending danger forbears it. It is observed of the Fox, that whensoever hunted to ground, he never comes out, but at the mouth of the Burrow, he lies and vents a while, and afterwards for some space, runs directly into the wind; and if he vents any thing which causes fear, returns to ground again. Having been much addicted to hunt the Fox, I have observed that many times, when the Fox hath been hunted to ground, and watched to be taken, he hath not come out further then the mouth of the Burrow, if he vented the watcher, (who therefore lies down the wind,) and hath continued sometime five or six nights in the ground, until he hath been almost starved; whereas at no time, if he were not watched, but he came out that night. And after they were taken, they would not of a long time eat in sight of any man, how hungry soever, until they became so habituated to men, that they apprehended no danger from them. So Deer do naturally desire to eat Apples, but if approaching, they vent them to have been handled by man, they forsake them, and flee away affrighted: And so all other Creatures, upon apprehension of danger, cease to pursue their appetite. Thus we see in Creatures irrational among themselves, when they rage most in their lust and appetite, yet give way to them by whom they are overcome. And from hence it is, I conceive, that irrational Creatures are not onely reclaimed from their natural fierceness, but are taught to do those things which they have no appetite or natural inclination to, by cunningly insinuating danger to them upon their not doing them; and that this must be done by insinuation and cunning, and not by outward force onely, is evident; for the most furious and robust man is not the best horse-breaker and pacer.

Irrational Creatures have Election in their Actions.

29. *Aristotle*, *Eth. Lib. 3. Cap. 7.* makes Virtue and Vice to be fitted in the power of Man, and therefore that Legislators may justly punish Vices and reward Virtues; and that all exhortation to Virtue, and dehortation from Vice, were vain and ridiculous, if it were not in the power of Man: Yet truly I am rather of *Plato's* opinion, who makes Virtue to be from a higher cause then is in Man. For though I do assent to *Aristotle*, that all punishment for disobeying or transgressing Laws, and Exhortation thereunto, were vain and ridiculous, if it were not in our power to do them; yet is it not the doing, or not doing of things commanded or forbidden by them who have a right to command or forbid them, a Virtue; but the doing or

Man is a free Lord of all his Actions.

*Meno.*

not



not doing them in such a formality as they are so commanded or forbidden, which makes them virtues; which must needs proceed from a higher cause than is in man, or can be taught him. As if a Prince commands another to do something which he ought to do, he does it; but takes a reward or bribe from another to do it: I say, this is not virtue in the Agent, because he did it not as commanded, but bribed: Whereas another does his duty without reward, and it may be to his much temporal detriment; this is virtue, and must needs be from some higher cause, then is to be found ordinarily in men.

What is the  
Minde, and  
whether to be  
found in Crea-  
tures irrational?

30. All Creatures have Souls, but not Mindes: Other living Creatures, as well as Men, have vegetative Souls. The Minde is sometime taken for the Will, rightly informed from the Understanding and Reason, *Plato (Meno.)* Sometime for the Understanding, *Arist. Eth. lib. 6. c. 6.* Sometime for Reason or Counsel, as we say oft times, My minde gives me that such a thing is, or is not. And *Virgil. Aenead.*

*Nostram nunc accipe mentem.*

In each sense, this is proper onely to intellectual and rational Creatures; *Aristotle, Pol. lib. 1. cap. 5.* makes the *animus* or vegetative Soul to have dominion over the body of a Man, or other Creature, as a Master of a Family over his Servants, who is notwithstanding commanded, and in the power of the King or *Civitas*; but the Minde or the Will informed from the Understanding and Reason, to have the dominion, not onely over the body, but also over the sensual or vegetative Soul, as a King or *Civitas* hath over the Masters of Families.

Mans Actions  
are more free  
then other  
Creatures  
void of rea-  
son.

31. Man therefore being endowed not onely with a vegetative Soul, which is common to all Creatures, as well as Man, but with a minde superior to it; his actions are so much more free then other Creatures, by how much more liberty he hath to make election; but other Creatures actions can take information onely from their appetites and fears, whereas a Man in all his actions may consult and take information from his Understanding and Reason.

Onely Mans  
Actions are  
sinful.

32. Sin is an omission or transgression of some Law; but unreasonable Creatures, not having any other Law then their appetite and fear, and their actions being always conformable to them, they never sin. But man does not always conform his actions to what he understands to be just, and forbears those things which he understands, and his Reason tells him he ought not to do: Therefore onely Mans actions are sinful.

What are  
Actions, and  
not volun-  
tary.

33. It is true, that *Aristotle* says, *That the minde of Man hath the dominion of all his actions, and passions, as a King or Civitas hath over his subjects:* Yet many times the King cannot restrain the disorders of his Subjects, nor the minde always the passions of a man. And there is a Knowledge in irrational Creatures; as the Ox knows his owner, and the Ass his Masters Crib; and the whole body of them is but the organ or instrument of their vegetative Soul. And there is mad Dogs and Horses, as well as men; where therefore madness so far seizes upon Men or other Creatures, as they know not what they do, such actions are not voluntary. Nor is this onely in men frantick, and not *compotes mentium*, but oftentimes in men well disposed; as excess of grief, or joy, many times transports them into sudden and violent motions, or actions, which is not in their power to restrain: But these actions being ignorantly done, by the definition, are not voluntarily done; and by consequence, not sinful.

34. Memory

34. Memory is that faculty of the soul in living creatures, which retains the Idea's of those objects they have received into their senses, when the things so received are removed from the senses. And that all creatures as well as Man have Memory, is most evidently seen in all creatures, which can distinguish the voice of them that feed them from others of the same kind, and do more easily discern them, then men do another; which were impossible, without Memory. Any Dog, Horse, Cow, or any other irrational creature, knows his Keepers voice from any other mans: Let a Dog be carried in hundred miles from a place, and if he loses his Master, and be not restrained before he be well acquainted, he shall return home the same way he came. Nay, no question but that the outward senses of irrational creatures are much more exquisite then mens; and are much more prone in their will, and more subtle in their phantasie to attain those things which are pleasant and natural to them, and do much better remember those things they have received by their senses.

Annot. By this Proposition it is evidently false which \* Aristotle says, *In aliis animalibus res percepta manet, in aliis non manet*. And if it be true that he says a little after, *Ex sensu fit memoria, & ex memoria experientia, & experientia principium artis & scientia*; then are all irrational Creatures better apted and disposed to apprehend the Principles of all Arts and Sciences, then Men: for no question but the senses of irrational Creatures are much more subtle and exquisite then in Men. And by his position, of Memory being from the Sense, and Experiment from Memory, he makes all Creatures to be as scientificall and artificial as Men; where he says, that *Experientia pene simile quid scientia, ac arti esse videtur, &c.* And whereas \* Dr. Harvey says, pag. 27. de Gen. Anim. that *ex sensu permanet sensatum, ex permanentia sensati fit memoria*: I would know in which of the senses is this *permanens*? It cannot be in any of the outward senses; for it is a contradiction for any man to say, he remembers any thing he presently and actually sees, feels, tastes, hears, or smells: It must be therefore, that this *permanens* of the thing perceived, is retained by the Common sense (*viz.* of the Phantasie or Understanding) which is a confounding of two faculties of the soul (*viz.* of the Memory, and Phantasie or Understanding) in one, *viz.* the Common sense, or Understanding. And this the Doctor plainly confesses, where he says, *Quod in ipsa visione, sive actu videndi, singulare, clarum, & distinctum erat; id ipsum mox remoto visibili (clausis nimirum oculis) in phantasia abstractum, vel in memoria reservatum, obscurum & indistinctum apparet, &c.*

35. The Understanding is that faculty of the soul, which apprehends universal and prime causes, for which no reason can be given; and does phancy things true and false, just and unjust; and discerns and judges not only of things represented to the outward senses, but also of things retained in the memory. And as the Understanding does apprehend universal notions in the abstract, without the reason, and for which no reason can be given; so does it also those things which are rightly deduced from them by reason.

36. Those things are Principles, which constitute Ratiocination, and for which no Reason can be given. *Eth. lib. 6. cap. 3.* Nothing can be Prime or Principle, but to that faculty of the Soul sensitive or intellectual, which does first apprehend it. For if there be any thing in the Understanding,

What is the Memory.

If Aristotle had said, there is nothing in the memory which was not before in the senses, I should have assented to it. I do much wonder, Aristotle and the Doctor should affirm that experience is subsequent to memory, and is from multiplied memory; whereas it is impossible but that experiment must first be in the senses, and antecedent to the memory. And whereas they say, that experience is from multiplied memory; A man may burn his fingers upon once trial, as well as oftner. \* Anal. post. 16. lib. 2. cap. ult. Meta. 1. 1. c. 1. \* De gen. anim. pag. 21.

What is the Understanding.

All things in the Understanding were not first in the Senses, by the authority of Aristotle.



which was before in the Senses, this cannot be a Principle to the Understanding, but to the Sense, which did first apprehend it: As if I say, I know such a thing is true, because I saw it; this thing is not a Principle to the Understanding, but the Sense, which did first apprehend it. But no man will ask a reason of the Sense, viz. why I saw such a thing: for it is absurd, and no reason can be given of it, because it was first represented to the Sense. But *Arist. l. 6. c. 6. Eth. Mens, sive intellectus sit principiorum scientiarum*. All things therefore which are in the Understanding, by the authority of *Aristotle*, were not first in the Senses.

There is nothing in the understanding which was first in the senses.

37. I know this will at first blush seem a strange Paradox; yet narrowly looked into, is as true as any Proposition in Geometry: For the outward Senses apprehend only the corporiety or substance of things represented unto them; but the Understanding only the incorporeity of things so seen, &c. and discerns and judges whether such things so apprehended by the Senses, be pleasant, profitable, just or unjust, reasonable or unreasonable, commensurable, or incommensurable. Nor is the Idea of any thing thus seen, heard, or felt, ever after it be removed out of the sight, retained in the Understanding, but Memory; where the Understanding discerns and judges, what before was in the Senses. As if I see such a solid body, the Understanding judgeth whether this body be commensurable or not, by any notion or proposition before understood: This body afterwards removed, and the Idea or form retained in the Memory, the Understanding discerns and judges the passions of it so retained, which before it did in the outward senses. So I hear such a story told of things before done; afterward the sound is past, and the story retained in the Memory; the Understanding there judges and phancies it. Only things corporeal and substantial therefore being the objects of the outward Sense, and things incorporeal and without substance the objects of the Understanding, there can nothing be in the Understanding, which was first in the Senses. It is therefore absurd for any man to say, he understands that such a man hath such a hand, or face, or did such an action; because being corporeal and the objects of the Sense, they cannot be in the Understanding, but Memory. He therefore remembers such a man had such a face, or hand, or did such an action. But he may most properly say, he understands such a face, or hand, to be good or handsom; or that such an action was good or bad: because these things being incorporeal, cannot be apprehended by the outward Senses, but judged or phancied to be so by the Understanding.

There is nothing judged or discerned in the senses or memory, which was not before in the understanding.

38. If it be true which *Aristotle* and all Philosophers affirm, that there cannot be any effect but from some efficient cause, nor act without an agent; then is it not possible but that which is in the understanding, and does judge, discern and phancie, is superior, and must precede every thing which is so judged, discerned and phancied in the memory or senses. All things therefore are so far from being in the senses, before they were in the understanding, that it is not only impossible that any thing which was in the sense, should be in the understanding; but also that which is in the understanding, must be, before it can judge, discern, or phancie any thing, in the memory or senses: And by consequence, no Art nor Science can be learned or taught another, who does not first understand the Principles thereof; nor is it possible that the Principles of any Art or Science can be

be taught. I know it is usual for men to confound the sense with the understanding: As when a man talks unconclusively, they say he talks not sense, (yet it may be he speaks very loud) that is truly, he talks not understandingly, or not to be understood.

39. By the authority of *Aristotle, Eth. lib. 6. cap. 6.* the Understanding does apprehend things either abstractly, or concretely. Abstractly without the Reason, as Principles, for which no Reason can be given; or concretely with the Reason, as when by the Reason it apprehends things deduced from such Principles before understood, and for which no reason can be given; for *Intellectus sit principiorum, Scientia vero cum ratione conjuncta.* The understanding therefore of prime and universal causes, for which no reason can be given, can be nothing else but *radius divini luminis in animabus hominum;* and by consequence it cannot be learned, taught, or communicated by any Creature, or all the Creatures in the world.

The Understanding is a ray of Divine light in the soul of man.

40. Only Man, of all Creatures of this world, understanding prime, necessary, and universal causes, and phancying things true and false, just and unjust, only Man is an Intellectual creature.

Only Man, of all the creatures of this inferior orb, is an Intellectual creature.

41. \*I. Principles, by the authority of *Aristotle, Eth. lib. 6. cap. 3.* are those things which are known to an Intellectual creature, which do constitute Ratiocination, and of which no reason can be given; and (*cap. 6.*) are apprehended only by the Mind or Intellect. Such are the Principles of Geometry; and such are *Idem, eadem; secundum idem, esse, & non esse, impossibile;* & *Omnis affirmatio aut negatio, aut vera aut falsa;* & *Cujus est nolle; ejus est velle, &c.*

\*What things are Principles.

II. Man not being only an Intellectual, but a Sociable creature, God hath engraven in the minds of all men certain Laws for which no reason can be given, to which they ought to conform all their actions, for the preservation of peace and society among men.

III. But because the Laws of Nature oftentimes only are *ex Theſi;* there must be some things *ex Hypothesi,* which must be understood; and these must be prime and superior to them to whom they are given, and for which they can give no reason, or they cannot be the rule and reason of their actions. I require Humane and Despotical Laws for Principles, to those who by right or due are subject to them.

IV. But God having made Man not only intellectual, rational, and sociable, but endued him with an immortal soul capable of eternal happiness, He hath extraordinarily and supernaturally revealed himself in the Scriptures, that men submitting themselves and their Reasons to those Divine precepts, might *work out their salvation with fear and trembling.* But if it be asked, How shall I know the Scriptures to be Gods Word, since they are not known to be so by the understanding, nor outward sense? I would ask that man, if he be a Christian, how he came to be so? For his being a Christian, implies his belief in them as the Word of God; and he is required no more: And if the power and grace of God were not as much shewed in converting the world to Christianity by the preaching of a company of poor Fishermen (all Temporal powers persecuting and contradicting it) as in all the Miracles of old under the Prophets and Patriarchs? And whether the power and grace of God in his Son, was not more visible under the New, then in the Prophets, and under the Old Law?

But because the Laws or Precepts of God in the Scripture command



1 Cor. 14. 40.  
1 Tim. 2.

many things in *Thesi* only, (as, *Let all things be done decently and in order*; and, *Let prayers and supplications be made for all men, &c.* But this Decencie and Order is no where prescribed or defined by the Scripture) and the Church (to whom the right of defining such things, is given by God) *ex Hypothesi*: the Laws therefore of Church or Ecclesiastical Laws, are principles, and necessary for conservation of Christian society.

I require only Humane, Ecclesiastical and Despotical Laws for principles, which do not immediately proceed from God. All other principles whatsoever proceed, or are immediately created only by God alone.

No Laws create any obligation in conscience from any thing, which was in the senses.

42. All Men understand that they ought to obey the Laws of their superiors. But by the 37. Proposition, there is nothing in the understanding which was in the senses. Mens Obedience therefore, or their obligation in conscience to the Laws of their superiors, is not from any thing which was in the senses. But it does proceed from the connatural Laws of Nature, engraven by God in the minds or understandings of Men, or from his Grace supernaturally given to Men; and by consequence, those men who do not from innate good principles, their duty in conscience, will never from any thing feared or received into the senses, be it Whipping, Branding, or Hanging, ever be made good, but only deterred from being bad.

What is Belief.

43. Belief is the assenting to a thing to be true or false, not as either known to the understanding or outward senses, but as affirmed or denied by one or more, who are credible persons.

What is Faith.

44. Faith is the assenting to a thing to be true or false, not as known to the understanding or outward senses, but as commanded or forbidden by God extraordinarily; and supernaturally.

Whether things only credible, may be as certain as known to the senses, and incidently of the divine excellency of truth above any sensible knowledge.

45. It is an admirable thing to consider the providence of God (who is the God of truth) in the preservation of those things, which impartially relate the actions of Men, and the revolutions which have hapned in the world. Nor is it any more than a just and equal testimony *Polybius* in the Proem of his History gives of Truth, *viz.* that she ought to be esteemed as the greatest goddess; and that the greatest power ought to be ascribed to her, overcoming and triumphing over all the oppositions of Men, and verisimilitudes. Nor can any reason be given that *Polybius*, *Livy*, *Plutarch*, &c. did either write such Histories, or that such Histories written by them, were truer than those which are lost and rejected by Men, but only a kind of divine ayre informing Men of their truth; whereas those books which are falsely and factiously written, are exploded and neglected in a very short time; and yet whether they were truly or falsely written, few or no Men can judge from any thing known to the outward sense. I say few or no Man can so judge of them; for in that time when they were written, there were many more false and factious Historians to delude Men, than true and just to inform them. Nor can Men in subsequent generations from any thing in their outward senses, judge or discern whether any thing they record be true or false. Nay further, no Historian (except *Cesar* and *Xenophon*, and some very few others, who recorded infinitely more things not known, then known to them to be true) did ever know whether what he recorded were true or not. To evidence this yet more fully, there was scarcely (except *Casars* & *Xenophons*) ever any History truly written in those times, wherein the things were done, that men might take information from their outward senses; but Men were so carried by Faction or Interest, that in

re-

recording of things, they record things not as true or false, but as advancing their Faction and Interest: whereas Men in the subsequent generation not having those Passions and Appetitions, nor any sense of these things; subjecting all their Passions and Affections, as it were assisted by a divine Election, do make Election of those things which are true, and reject others, which the Malice or Faction of Men had imposed upon the World. And a Man is as certain, that there have been such Men as *Cesar, Hanibal, Alexander, &c.* and as assured of their Actions, as if he had seen them.

46. Since all things which proceed from God immediately, and for which no reason can be given by any Creature, may be justly required for principles by intellectual and reasonable Creatures; and since the Scriptures proceed immediately from God, or they could not be the Word of God, are therefore the principles of Faith. And since there is nothing within man naturally, which may assure him, that those things revealed in Scripture were Gods *Revelation*; it does necessarily follow, That Faith, or the Belief of God in the Scriptures, is Gods gift supernaturally and extraordinarily. Nor can all the Arguments of Tradition, Church, Excellency of stile, Truth, &c. move one stone to the proof of them: For they were the Word of God, before any Church or Tradition, &c. was. And if they had not been the Word of God before the Church received them, and delivered them to posterity; their Reception and Tradition could never have made them so. Besides, the Church having its being from the Scriptures, it can never prove the cause of its being. And what was it less, then the power and grace of God extraordinarily given to *Moses*, That the Bush burned and was not consumed? And of all the miracles done by him, and the other Prophets; and more then those, done by our Saviour, and the Apostles, and blessed Martyrs since? And that by the Preaching of a few Fishermen, against all the Temporal Powers in the World, Christianity should be propagated generally over the face of the Earth; and that I without any thing in me, or desert of mine, am baptised into this Faith? And he that shall dispute the truth of the grace and power of God in the *Old and New Testament*, and since recorded in Ecclesiastical and Prophane History, ought as much to be confuted with clubs and hissing, as he that denies or disputes his Principles in any Art or Science.

Faith is an extraordinary Gift of God.

47. All Principles are true or false, just or unjust, good or bad; either *necessitate absoluta*, or *necessitate medii*. Principles that are true or false, *necessitate absoluta*, are so, that they are immutable by God himself, as that two and two added, should not make four; or that things equal to the same thing, should not be equal to one another; or that any being should be superior to the cause of its being; or that contradictions should be true; or else true or false, good or bad, just or unjust, *necessitate ex hypothesis*: And these though they are necessary and principles to those to whom they are given, and immutable by them; yet are they not principles and necessary to them, who made and gave them. As the Laws of Nature, and Gods revealing himself in the Scriptures, are principles, necessary, and immutable by all the Men in the World; yet are they not principles, necessary, or immutable by God; but he might, if it had pleased him, made something else the Law of Nature, or otherwise revealed himself in the Scriptures. So Humane Laws must be prime, necessary, and immutable by Subjects, or their conforming, or not conforming their actions to them, could not be just

All Principles are prime and necessary, either *necessitate absoluta*, or *necessitate medii*.



just or unjust: But they cannot be prime, and necessary, or immutable by the Legislator, but as he sees occasion may alter or make something else which was not before Laws for the Subjects to conform and direct their actions to. It is therefore absurd and wilde to suppose, that the Law of Nature is simply necessary and immutable by God, or that the will of Men can make it mutable.

Annotat.

*Contra negan-  
tes Principia,  
non est dis-  
putandum.*

48. All Science, all Learning, all Reasoning, and all Conclusions, by the Authority of *Aristotle*, is begotten from pre-existent principles (for which no reason can be given by the Learner) which being granted, do demonstrate the Conclusion; but by the Authority of *Aristotle*, and all Philosophers, no Science or Conclusion can demonstrate the Principles. Where therefore either by a defect in the Understanding, Men cannot, or by a stubbornness in the Will, they will not apprehend Principles, there all Reasoning, Learning, or Discourse is at an end. If therefore I would learn a Man Geometry, and he either cannot, or will not apprehend the Axioms or common Notions of it, it is impossible I should ever make him understand the constitution of an equilateral Triangle: Or if a Man denies the Laws of my Countrey, I cannot teach him, whether such an action be just or unjust: Or if a Man denies the Law of Nature, I cannot prove that he ought to honor and obey his Superior, and to deal justly and uprightly with all Men: Or if a Man denies or disputes the Authority of the Scriptures, there cannot be any Conclusion or Inference from them, whether as Christians, any thing ought to be, or not to be done, or believed.

From whence  
the Confusions  
and Distracti-  
ons in Chri-  
stendom have  
arisen?

49. All demonstrative Science being begotten from certain and necessary pre-existent Principles; the Laws of God and Man being pre-existent, where they are clear and not inevident (which is not always the imperfection of Mans Law, nor can ever be of Gods Law) Men may as clearly, and as demonstratively demonstrate Conclusions from thence, as from the Axiomes in Geometry: And no question, that all the Confusions which have lately hapned in Christendom, were not caused from any want of understanding of the Laws of God or Man, but from the perverse wills of Men, who would not be restrained from their wickedness, neither by the Laws of God or Man.

What is Reason?

50. Reason is a faculty of the Understanding, which does prepare, apt, and define things, either in the outward senses or memory, so as they may be comprehended by something before known to the Understanding; or Reason, is that which does dictate the doing of any thing conformable to something in the Understanding.

What is an  
Axiom or  
common No-  
tion?

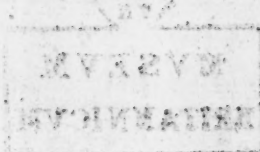
51. All Propositions, by the authority of *Aristotle*, are demonstrable or indemonstrable. Indemonstrable Propositions, are those Propositions which are Axioms or common Notions, for which no reason can be given; and though indemonstrable in themselves, do demonstrate all the Conclusions which follow from them. An Axiom or common Notion, is such an indefinite, prime, and necessary Proposition, which comprehending any definite thing within its terms, does necessitate such a Conclusion.

What is a De-  
finition?

52. A Definition is the comprehending every such individual thing in such a term, as may express such a thing, excluding every thing else.

Wherein a  
Notion and  
Definition,  
differ?

53. Although Definitions are properly terms comprehending individual things, yet is there oftentimes a necessity of comprehending Notions or Axioms too, under significant terms; as a Law is a term which may signify



nifie all rightful commands (which are prime and universal Propositions to them, who ow obedience to such commands) which comprehending any action, does necessitate such an action to be just. So Geometry not onely comprehends all Propositions which have reference to surveying or measuring of Ground; but also all the Propositions in *Euclids Elements*, are comprehended under the terms or notion of Geometry, &c. Definitions are of Singulars, Notions of Generals or Universals; the Reason, Memory, and outward Senses, are of Definitions; the Understanding, of Axioms or common Notions.

The Doctor does not onely confound the Memory and Understanding, where he says, *Quod in ipsa visione, sive actu videndi, singulare, clarum, & indistinctum erat; id ipsum remoto visibili in phantasia, vel memoria reservatum*, (thereby making the phantasia and memory the same thing) *obscurum & indistinctum apparet; &c.* But also here, and Page 27. he confounds Axioms, and common Notions, with Definitions, where he says, That from experience comes *ratio Universalis, Definitiones, & maxima sive Axiomata communia, cognitionis certissima*. And the instances he gives of his meaning is quite awry, and nothing to the purpose; For *idem, eadem, secundum idem esse, & non esse impossibile*; is not onely not known from experiment, but is as much known to any intellectual Creature, before experiment, as after: And so, *omnis affirmatio, & negatio, aut vera, aut falsa est*. These Axioms are not Axioms, because they are found true by experience; but because universally known to be true, before any experiment was made of them; nor is it possible that experiment should be made of all things, wherein they hold true; the truth therefore of them cannot proceed from experience.

Annot.  
Pag. 21. de  
Gen. An.

54. Although divers Men do phantasie the same thing seen or remembered; yet if they do not rationally phantasie it, viz. by comprehending that thing seen or remembered; in something before understood to be true or false, &c. Then do they never conclude or agree in their inference. Those Men therefore, who do not rightly conclude a thing, (either the Object of the outward Senses, or the Idea of it reserved in the Memory) from something before understood, but because they affect or desire it to be so, conclude affectionately, not rationally. And Men who do so, are less rational, then other Men who do not.

Why some  
Men are more  
rational then  
others?

55. Knowledge, is the knowing of a thing from the causes.

56. <sup>a</sup> All Knowledge or Science is either rational, or sensible.

57. <sup>b</sup> All Rational Science, is a right Inference or Conclusion, mediately or immediately; from some universal Cause known to the Understanding.

58. <sup>c</sup> *Intellectus sit Principiorum, Scientia cum Ratione conjuncta. Eth. lib. 6. cap. 6.* Reason is the Instrument of the Understanding begetting; Science is the thing, which from the Understanding by the Reason is begotten.

What is  
Knowledge?  
<sup>a</sup> Knowledge  
or Science,  
how many-  
fold?  
<sup>b</sup> What is rati-  
onal Science?  
<sup>c</sup> How Science  
differs from  
Reason?

59. A Demonstrative Proposition is, when the Predicate or Axiome understood, comprehends the thing defined, which is remembered; Or any right Inference, Conclusion, or Dictate of Right Reason from Necessary and Universal Causes, may be the Predicate of any Demonstrative Proposition.

What is a De-  
monstrative,  
Affirmative  
Proposition?

60. A Negative Demonstration is, when Reason shews that the Subject cannot be comprehended by the Predicate.

What is a Ne-  
gative, De-  
monstrative  
Proposition?

61. Logicians





The necessary  
Parts of every  
proposition.

61. Logicians make three necessary parts or terms in every Proposition, viz. the *Nomen antecedens*, the *Nomen consequens*, and the *Copula*. The *Nomen antecedens*, is the Subject or thing in the outward sense or memory defined. The *Nomen consequens*, is the Predicate, or something known to the understanding, which comprehends the Subject. And the *Copula*, is that which joins these two. As, *Omnis homo est animal*: *Homo* is the Subject, or the thing seen or remembered: *Animal* is the Predicate or Notion which comprehends *Homo*, which is the thing understood; and *Animal* does not only comprehend *Homo*, and all other Creatures which a man has seen or heard of, but all those Creatures which he shall ever see or hear of: And *est* is the *Copula* which unites the Subject *Homo* with the Predicate *Animal*.

Annot. When I say, the Subject is the thing sensible, or remembered, I always except Metaphysicks and Mathematicks, which are considered without any sensible matter. And indeed it is an admirable thing to consider, how intelligibly Mathematicks are understood without any sensible matter, more than any corporeal things are.

Rational Science is produced from the understanding by the reason and memory, or outward senses.

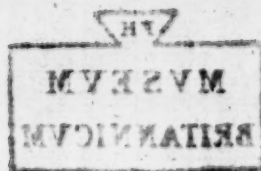
62. It is truly observed, that every perfect creature is generated from matter and form, diffused in several bodies and creatures; and that this matter and form, so long as it continues thus diffused in divers bodies, is never qualified for generation or production of any creature, until they become united into some place apted and disposed for production, where from the benign influence of the Sun or celestial bodies, as from a more universal and efficient cause, they evade into living creatures. Nor does this hold less true in the production or generation of all rational Science; for the Reason by it self without matter, cannot form, dispose, or define any thing. Nor does the outward sense or memory apprehend things otherwise than as seen, &c. or remembered, not as formed, disposed, or defined, so as to be the Subject of a Proposition. Since therefore the Reason cannot prepare, apt, or define, unless the Memory or outward senses supply matter; nor the Memory without the Reason dispose, prepare, or define any thing so as to be the Subject of a Proposition; it does necessarily follow, that the Reason united or conjoined with the Memory, does prepare the Subject of every Scientific Proposition. But in every Scientific Proposition, there must be a Predicate, which comprehending the Subject, must be understood. The Understanding therefore is the prime and efficient cause of all rational Science; and the Reason is the formal cause, which does dispose and prepare the matter in the Senses or Memory to be comprehended, judged, or discerned by the Understanding: And by consequence, the Reason and Memory, or Senses, are but the Instruments by which the Understanding does generate and produce Science.

Why only  
Man is a reasonable creature.

63. Only Man can rightly infer and deduce particular Conclusions from universal Causes, and can direct his actions conformable to things in his understanding, (and not to his appetite and senses, which is common to all living creatures as well as man:) only Man therefore is a rational creature.

By what means men attain to Science.

64. All men naturally desire to know: And though by *Aristotles* judgment, all Science is begotten from preexistent Knowledge, which from things granted does demonstrate the Conclusions; yet must there be some manner and method which men must use, by which others as well as themselves may understand this, or that thing to be a Science, or scientific Conclusion



Conclusion. Men therefore must propose that method which *Euclid* observes, or all their science will be equivocal and obscure, *viz.* First to define all those things of which his science is compounded, in such terms, that every singular or individual may be so comprehended, that it may be wholly with all the parts of it contained in the definition, excluding every thing else: For if a man define a thing so, that there be any so much as equivocation in it, as that it does not signify this only thus defined, but may something else; then of necessity must all the Science that bears a part of this definition, be equivocal and uncertain. And as the definition must not be equivocal to signify more then the thing defined, another thing as well as this; so neither must it signify less, *viz.* any part of the thing defined, for the thing; for then all in which this thing is a part, will be infinitely deficient and imperfect.

Secondly, After the definitions, I require such things as no ingenious man will deny: As, that I may adde, divide, multiply, convert, &c. these things thus defined.

Thirdly, I set down those Axioms, Principles, *Effata*, *Pronuntiata*, Common Notions, or Indemonstrable Propositions, which are the first causes of the Science, and do demonstrate all the Conclusions of it; but in themselves are indemonstrable, and for which no reason can be given, but only the good will and pleasure of him that made them so. And these Principles must be granted, before any man can by his Reason produce any Conclusion. And if a man denies these Principles, all Argumentation is at an end; for, *Contra negantem principia non est disputandum*: And no mans Reason can work upon nothing; nor prove, nor find out any thing, before something be first granted, by which a man may prove it, or find it out.

65. I have known, and know many men, who have vast memories, and very strong phantasies, who notwithstanding have been as unreasonable as any; and would never admit of any discourse of any thing they fancied to themselves, but upon a very slender opposition would fall into passion: And the reason is, because they phancie things only because they please them, and do not understand them as true. And if any man shews such a man some Consequence which will not follow from what he phancies, or that it is inconsistent with some known universal Truth; then does he seek to supply with passion what he wants in reason, because he is crossed in what he desires should be true. Whereas men who understand, or desire to understand their *Thesis* or Notion, not only take pleasure that nothing can be inferred from it which is false, and that it is not inconsistent with any thing true whatsoever; but will be so far from falling into passion with any man that opposes it, that they would thank any man, and take him for their friend, that can shew them wherein, what they suppose to be universally true, is not; or that it is inconsistent with something which they suppose to be universally true. The Spirit of God says, *He is a fool that rages and is confident*. These light phantastical men, who will phancie things for truth, not because they are so, but because they would have them so, do not only rage when they are convinced that those things they phancie for truth, are made to appear either but verisimilitudes, or falsehoods; but will take them for illwillers who convince them, and continue as confident in their foolish apprehensions, as before:

why some  
men are more  
phantastical  
then others.



Why some  
men are more  
dull than o-  
thers.

66. As the levity of the Phantasie (which is always in agitation) apprehending things without Reason, is the cause why men too suddenly apprehend Verisimilitudes for Truth; so the want of Phantasie is the cause why many men of vast memories, very slowly apprehend the cause of any thing. Where the Phantasie is too light, there men apprehend or believe every thing for Truth, they affect or desire, and are soon perswaded to any thing they are not wilfully prejudiced to. Where it is crass and dull, and moves slowly, or as we say, where men are endued *pingui Minerva*, there men are hardly moved to understand any thing.

What is Sen-  
sible Know-  
ledge.

67. Sensible Knowledge, is the retaining the Idea of things in the memory, which before were in the outward senses. And there being neither Reason nor Understanding to the attaining of this Knowledge, it is common to other Creatures as well as Man: *The Ox knows his owner, and the Ass his masters crib*, says our Saviour.

Of Argumen-  
tation *à Poste-  
riori*.

68. But all Causes from whence men do infer and discourse, are not so perspicuous, as are the Axiomes in Geometry, or the Laws of God and a mans Country. But some Causes are known to Nature, and not to us; as the Quadrature of a Circle; and what proportion (or *ratio* rather) the subtending side of an *Isosceles* right-angle Triangle, hath to one of the comprehending sides. And some Effects are certainly known to us, but the Causes are not known, either to the understanding or outward sense; as, that Summer is hotter then in Winter, and that men are sick and indisposed. I say therefore, where the Causes are but probable and conjectural, whatever the Effect be, no Conclusion can possibly amount any higher; for, *Conclusio sequitur deteriorem partem*.

No Art or  
Science arises  
from Argu-  
mentation *à  
Posteriori*.

69. All Arts and Sciences are begotten from pre-existent Principles, which are known to be necessarily true. But in argumentation *à posteriori*, the Effects are only known to be, but not the Causes, which are only probable. No Art therefore, or Science, does arise from argumentation *à posteriori*.

No probable  
Conclusion  
arises from  
Experiment  
or Memory.

70. By the 38. Proposition, it is impossible that any thing in the memory or the outward senses should be judged, phansied, or concluded, but by something which was before in the understanding. Experiment therefore, memory, or the outward senses, which only apprehend the material forms and effects of things seen, &c. cannot conclude any thing probably, any more then a dead body can move without life: besides, it is so ridiculous, that I wonder every man does not deride it. Will any man say, a great Lout new whipt, is probably like to make a good Schollar, because he hath made experiment of the strokes of a Rod? or that the Fool in *St. Foneses* is a wise fellow, because he makes experiment of the power of the Sun by his every daies sleeping in the raies of it? Or that a Butcher is an excellent Philosopher, because he makes experiment of killing Cattel? And that experiment and memory does not move one step to the attaining of any probable Conclusions; the Physitian or Philosopher reads the lecture on the parts Anatomized, whereas the Surgeon dissects and makes the experiment. And if experiment were the only way to attain to probable conclusions in Physick and Philosophy, then not the Physitian, but the Apothecary were the better Philosopher.

There is no  
probable  
Conclusion,  
without Ex-  
periment or  
Memory.

71. If by the 7. Proposition, the apprehension of universal Causes, certainly and necessarily true, in the understanding, cannot produce or prove any

any thing without the concurrence of particular causes; then in reason cannot probable causes of themselves without the concurrence of particular causes, either known to the outward sense or remembered, produce any thing. I will not therefore give one rush for any Physicians, or Philosophers judgment, who is not an experienced man.

72. There are some things which nature brings to pass, without any art or help of any Creature; others never without art and industry, as a House, and all Arts and Sciences. In the first God is the great and only Opificer: And it is only He who made Man and all other Creatures (not merely spiritual) of such principles, and so compounded, that they every minute tend to the resolution of their first principles; and yet in their thus dying, something should generate in them, which should perpetuate the generation of them in their species, as they shall dye in their individuals. Thus we see some soyl brings forth (without any art or industry of man) Grass, Furr, Broom, &c. Some is of a petrifying quality; in other are Mines of Silver, Gold, Coal, &c. *Et non omnis fert omniatellus.* Some men grow sick, others well, without any cause from themselves: These causes therefore being only known to God, there cannot be any demonstrative conclusion from them by men, because the causes are not evidently and necessarily known. But although it be not Gods pleasure that men should understand the causes of these things, so as to conclude demonstratively from them; yet as having made two lights of different splendor, *viz.* the Sun and Moon, though men see clearly only by the light of the Sun, yet do men see, although obscurely and but probably, by the light of the Moon; so though men do not in natural Philosophy and Physick from prime and necessary causes, as from the light of the Sun, see so as to conclude demonstratively; yet hath not God always in these things totally shut out all light from men; but they see as by the light of the Moon; and in Philosophy are Theses, and Aphorisms in Physick, from whence by these senses, memory and experiment, men proceed infinitely, and daily probably finde out things, which before were not so.

From whence  
men attain to  
probable con-  
clusions.

73. As in all Argumentation *a priori*, there must be Principles assented to, which must be the rule and reason of the argumentation: and where men either by stubbornness or defect of understanding, apprehend not Principles; there of necessity can be no Art or Science taught; so in argumentation *a posteriori* men must agree upon some Theses, or Aphorisms, which must be the rules of the argumentation; men may discourse of the causes of things, and not improbably conclude; where they can make no experiments; (as in the causes of Meteors and Comets;) but no man can from all the experiment in the world conclude any thing, but from something in the understanding which must be assented, and comprehend that thing of which the experiment was made. When therefore men by a defect in the understanding cannot apprehend Theses, or Aphorisms; or by stubbornness they will not; there all argumentation in either Physick, or Natural Philosophy, is at an end, and it is impossible such men should either learn or be taught.

No argumen-  
tation *a Poste-  
riori* where  
Men agree  
not upon  
Principles.

74. Only man can by his reason from causes probable in his intellect, rightly infer and conclude the causes of things in the memory or outward senses, only man therefore can attain probable conclusions, or conclude *a posteriori*.

Why only  
man attains  
conclusions  
*a Posteriori*.  
Annot.

King James would affirm of his Hounds, that in their hunting they used



reason, for when they had overrun the scent, they would return on both sides of the path where they came, and if on neither side they hit the scent off, they would run back, concluding because it was not on, nor off on neither side, it must necessarily be back where they came: But more narrowly looking into, this is not done of the Hounds by any reason, or acquired habit, but from an internal excited appetite moving them, as Birds make nests, and Bees honey-combs, which they cannot but do at such times, but cannot at other times, nor yet learn nor teach them other creatures, nay, nor of the same kind with themselves; take a Hare, Deer, or Fox, &c. and let them be kept among Hounds in their kennel, or so that the venacious appetite of them is not excited, and they will not meddle with them: whereas men do not acquire Arts and Sciences by any necessary impulse moving them, and only at such times when they cannot do otherwise: nor are they excited thereunto by any material outward object, but may learn and teach them other men, and not upon necessity, but upon all occasions as they shall judge requisite.

Things known to the outward senses, are more evident then any probable conclusion.

75. Since every conclusion does follow the weaker part of the premises, and since in all conclusions *a posteriori*, the effect is only known to the outward senses, and the cause but probable in the intellect; the conclusion cannot amount any higher then probable. But Men by their outward senses do apprehend things more then probably. Things therefore apprehended by the outward senses, are more evident then any probable conclusion; and by consequence, no man will reasonably dispute probably against what another hath seen or felt, &c.

Things known to the understanding, are more evident then to the outward senses.

76. There is nothing so much resembles God, or Heaven, as Light; nor any thing so much Hell, as Darknes. So incomprehensible is Light, that it cannot be defined. In all other things, the motions, actions, accidents, or passions happen in succession of time; only light *diffunditur ab instanti*. The rays and effluence of the Sun, notwithstanding the immense distance of all the created bodies in the Universe, at the same instant of time, not only give light to them all; but their power and influence is the prime and efficient (at least instrumental) cause of the generation and preservation of all corporeal creatures in them. If a man considers the Light of the little world Man, in the eye, (how it at the same time sees notwithstanding the vast interposition of space) so many and so admirable works of the Creation; it cannot less then beget an astonishment in him, of the great power and goodness of God towards him; yet how infinitely short this outward visible sight of the eye is to the Divine Ray in the understanding, appears in this, that more is to be applied to one principle known to the understanding, or to one demonstrative conclusion from thence, then to the sight or sense of all the men of the world to the contrary: Should therefore all the men in the world affirm, *That they had seen two things equal to a third, and not equal to one another, or that they had seen an Orthogonal Triangle, the square of whose subtending side were not equal to the squares of the comprehending sides; or a right lined Triangle, whose three angles were not equal to two right, &c.* yet would I ascribe more to the truth of these things known to the understanding, and from thence truly demonstrated, then to the affirmation of all the men in the world; nay, so necessary are these things, that God (who can annihilate all the Universe in a moment,) cannot make them otherwise; or should all the men in the world affirm, *that I ought not to serve God, nor honor my King and Parents, nor keep promise,*

Note the divine excellency of the understanding.

promise, nor give every man his due, &c. yet more is to be ascribed to these Laws engraven in the minde of every man, than to the affirmation of all the world to the contrary.

77. Arithmetical proportion is, when three or four numbers are so ordained, that they increase equally; the extremes added make the same number with the mean added or doubled, if the numbers be but three: As 3. 4. 5. 6. are in Arithmetical proportion, for they increase equally; and 3. added to 6. is equal to 4. added to 5. And so 3. 5. 7. are in Arithmetical proportion, for they increase equally; and three added to 7. is equal to 5. doubled.

The wonderful Harmony of the Faculties of the Soul.

By Def. 4. lib. 5. Eucl. *Proportio est rationum similitudo*. And Def. 5. it must consist of three terms at least, though indeed it must of four: For where the terms are but three, the *medium* is iterated twice; as what proportion 4. hath to 6. 6. hath to 9. All Geometrical proportion is either discrete, or continued. Discrete is, when the *similitudo rationum* is only between the 1. and the 2. and the 3. and 4. term: As 2. 3. 4. 6. is in Geometrical discrete proportion; for, the *similitudo rationis* of 3. to 2. and of 6. to 4. is the same, viz. *sesquialtera*; but the *similitudo rationis* of 4. to 3. is not the same, it being *sesquitercia*. In continued proportion, the *similitudo rationis* is the same in all the terms; as in 2. 4. 8. 16. the *similitudo rationis* of 4. to 2. and 8. to 4. and 16. to 8. is the same, viz. *dupla*. In all Geometrical proportion, the extremes multiplied into themselves, produce the same number with the mean terms multiplied into themselves.

Harmonical proportion, increases neither equally, nor proportionally; nor do the extremes added or multiplied, produce the like number with the mean: And yet in an admirable manner and sweetness do the extremes so connect the mean, that the proportion of the greater extreme to the lesser, is the same with the differences between the two greater and the two lesser. As 2. 3. 6. increase neither equally, nor proportionally; nor is the mean number 3. added or multiplied, the same with the extremes 2. and 6. added or multiplied, but is in harmonical proportion; because the difference between 6. & 3. the greater extreme, is triple to the difference of 2. & 3. the lesser extreme, which is the proportion between 6. & 2. viz. triple. And if there be any variation of either of the extremes, all Harmony ceases. All Harmonical proportion consists only in three terms.

As in Harmonical proportion the terms are necessarily three, so are the Faculties of the Soul, viz. the Will, the Understanding, and Memory: And as the mean term in Harmony is so placed, that if there be any excess or defect in either of the extremes, all Harmony ceases; so hath God placed the Understanding in a mean between the Will and Memory, that if there be any defect or excess in either, or both do not conform to the Understanding, all Harmony of good and prudent actions ceases, and they become wicked and foolish.

78. Experience, is the trial or apprehension of things from the outward senses; and this is common to all sensible creatures, as well as man. And therefore, although according to the judgment of Aristotle, *Scientia* be *activa*; and therefore being only in the immaterial object of the understanding, it may be learned and taught without experience: yet Art being passive, as it is applicable to some material subject, cannot be taught without experience. Notwithstanding *de facto*, from the outward senses only

Of Experience, and what knowledge arises from thence: Eth. lib. 9. c. 2.

may



may many Conclusions in Arts be taught men, who apprehend them not from their causes, as we see in mechanical Handicraft-men, and Husbandmen; yet I think no man will affirm them to be very understanding men, how experienced soever they are. But that man who shall go about of his own head to acquire Knowledge from Experience only, shall be a Fool as long as he lives, and live to see misery enough. That the consequence of Experience may be taught irrational creatures, capable thereof as well as men, is every day seen in Horses, Dogs, and Hawks, &c. who from strokes, blandishment, and harsh words, are taught many things contrary to their natural disposition.

Conclusion.

79. It is therefore evident, that neither the Principles of Arts and Sciences, nor Arts and Sciences, nor any Conclusion *à Posteriori*, is to be enquired into only from the Memory and Experiment, according to *Aristotle's* and the *Doctor's* Judgment; but Science may be taught without Experiment: And that what is begotten from the Memory, Observation and Experiment, is common to all sensible creatures as well as men.

Pag 29 de  
Gen. Anim.

And whereas the Doctor says, *That there can be no prudent and truly knowing man, who by his own experience hath not thoroughly understood a thing to be so; for, without that, we only have Opinion, and believe; but the Knowledge is rather to be esteemed of other mens, than ours: I say;*

*Felix quem faciunt aliena pericula cautum.*

Let other men by experience know, that Laws hang, whip, and otherwise punish; I say, let the Knowledge be theirs, for all me. And in vain should all counsel, advice, discourse, and reasoning be to any prudent man for the direction of his actions, if Experience only of our calamity be the true and onely way to attain to Knowledge. And though I be infinitely more in love with one Demonstration *à Priori*, then it is possible any other can be with any direct or probable Conclusion *à Posteriori*; yet will not I therefore exclude all Argumentation *à Posteriori*, but reverence both the memory of *Aristotle* and the *Doctor*, as two of the most eminent Philosophers of the Antients and Moderns, who by their learned Labors have transcendently well deserved, both of the present Age, and shall of all Posterity.

*Si placet in Logica, nil vetat esse novum.*

OBSER-



## O B S E R V A T I O N S

U P O N

Mr. *Tho. White* Gent. his Grounds of Obedience  
and Government, Dedicated to his best Friend

*Sir Kenelme Digby.*

## The First GROUND.

*Wherein consists the Perfection of Government.*



Ur Author begins and tells us, he hath learned a Lesson in *Cyropædia* (it will prove a short one, and yet more then is true) wherein *Xenophon* moves the Question, *Why of all other living Creatures* Author. *which are of different natures from Man, we easily attain to the mastery and rule, but few Men are so intelligent as to be fit to govern Men, and those the worthiest part of mankind?*

Why, some body that hath better eyes then I, finde any such thing in *Cyropædia*, as this last, *but few Men,* Observ.

*etc.* But our Author who hath made *Xenophon* speak what he list, may best answer what he thinks good himself, which he wisely does, and so makes up the first Paragraph.

By the way, it is a marvellous thing that *Xenophon* a Heathen man, in his Proem, should in admiration recite those very things of *Cyrus*, which God by that most noble Prophet (extracted from the loins of Royal Ancestors) foretold almost One hundred and fifty years before *Cyrus* was born, in the very name of *Cyrus*, which any man who compares this Proem with the six first Verses of *Isaiah*, Chap. 45. may see.

B

But



Author. But our Author goes on and tells us, *We need not look into Philosophy, nor study learned Books, to know that the nature of man is inclined to have its own will, and casts all things which are under his consideration to compass and effect it: As also every ordinary mans knowledge and consideration, is far beyond any we finde in other living creatures; and by consequence, is far less easily masterable then any of them.*

Observ. If God had not made Man a Rational and Intellectual Creature, and ingraven the Law of Nature in his minde, that he might conform and direct his Actions thereunto, but onely his Will to be the Rule and Reason of them, I should be content to subscribe to what our Author says in this Paragraph; but indeed I shall not easily renounce all these to assent to him.

Author. Whence we may plainly collect, That were it possible for a Governor to make every single Person in his Dominion understand particularly, that what was ordered by the Government, was his own truest Interest; such an one would be the most absolute and perfect Governor; and infallibly would finde the charge of governing most easie and sweet, as well to himself as subjects.

Observ. Our Author in the antecedent Paragraph makes Man inclined onely to have his will in all things: In this he tells us it is best for the Governor to make every individual subject to understand; which is to no purpose, if every man will have his will, and do onely in order thereunto.

Author. Our Author to clear this case, both in Reason and Experience, tells in the next Paragraph, *Of driving a Wedge into a hard piece of Wood, and of Blacksmiths laying their Iron upon their Anvile in a scituation below their Heads.*

Observ. He means sure, such a position best sorts with his discourse.

Author. Upon which Principle it is, that they who tutor Dogs, Horses, Elephants, and Hawks, knowing the ordinary attractive of Beasts to be meats, and some kinde of flattery, make them to understand to the proportion of their capacity, that to do the action they breed them for, gains them food: To which they joyn also certain motions of stroaking and gentle words, that make an impression in the Beast of its own excellency, and that it pleases its Master. In like manner to deter them from certain actions, Cudgels, whips, and harsh words are used, which have a notabler efficacy then one could imagine, if he saw it not by experience.

Observ. Our Author before having made Man onely to have Will, here makes Hawks, Beasts, and Beasts to have understanding; and by consequence himself a verier Beast then Dogs, Horses, Elephants, and Hawks.

Author. This (*viz.* Flattery, Cudgels, Whips, and harsh words) applied to mankind, drives the effect home (and see his Reason) for Man being a Rational Creature, (whose inclination is to work according to Knowledge) desires to know that the work prescribed him, is good.

Observ. Did ever any man hear that Flattery, Cudgels, Whips, and harsh words were to be applied to Man, because he is a Rational Creature; and that from thence he desires to know, that the work prescribed him, is for his good? Indeed stripes are fittest for the back of a Fool; it may be it is from thence our Author knows no other way of attaining his good. And here he makes Man to work according to the inclination of his Knowledge, and before of his Will. And I tell our Author, a Man may know his Masters will, and not do it; and therefore a Mans Will and Knowledge are different things.

Our

Our Author concludes this Paragraph, *That the Nature of Man is to be* Author.  
*free; and to act whatever he does, because it seems best unto him.*

But in the next Paragraph he begins concluding, *That to make Men work*  
*freely, is to determine their actions; and concludes, That if Reasons were solid,*  
*when the Governor proposed them, such must of necessity be for the most part the*  
*sequel.*

Thus hath our Author learned new terms of Philosophy, which *Observ.*  
 neither the Schools, nor *Aristotle* ever heard of, *viz.* Of determining Mens  
 actions to make them work freely, and that necessity is but for the most  
 part; the contrary of which is true in both, for necessity is *ad unum* and  
 determined, and freedom *ad plura*.

Yet these are things of no consideration with our Author; but he goes *Author.*  
 on confidently, and in the next Paragraph tells us, *Experience maketh this same*  
*as manifest as Reason concludeth it; and then tells us of a Mother and Nurse,*  
*and of a Sucking Childe, and gay things, and I know not what indeed, and*  
*nothing to the purpose; and at last concludes, That the perfection of Govern-*  
*ment agreed on by all hands, is to make the obeyer understand, that it is his own*  
*profit the action aims at.*

Why, and I tell our Author, That to make the obeyer under- *Observ.*  
 stand that it is his own profit which the action aims at, is the next way to  
 ruine this, or any other action which any Governor undertakes for the  
 good either of himself, or the obeyer: For, Secrecy (the life of all actions  
 and designs, a quality wherein Cardinal *Richlieu* was so eminent) cannot  
 be, if the obeyer must be made to understand that it is for his good. Expedi-  
 tion for Performance, cannot expect a return of the Subjects understand-  
 ing, whether such a thing conduces to their good or no: Besides, it is a  
 madness for any man to go about to make another man understand, what is  
 not possible for him to do. Now Reasons and Mysteries of State so far  
 transcend the capacities of Subjects in general, that it is impossible for  
 them to understand them; and one of the chief ends of all Government is,  
 To suppress Faction, and retain the governed in their Obedience. And the  
 endeavoring to make the governed to understand, whether this or that be  
 better for them, will probably divide them into Factions, about this and  
 that (for Reason, God knows, but little will be found amongst them) to the  
 danger and destruction of one another. It is sufficient for the obeyer to  
 understand, that his Safety and Preservation depends upon his Obedience,  
 and that his ruine follows from his disobedience: And what General of an  
 Army (who hath but a subordinate power) who commands a party upon a  
 design, though to the peril of their lives, will expect a return from that  
 party, That they do not understand that this design is for their good?  
 With more Reason ought a Supream Prince to expect obedience from his  
 Subjects to his commands: Rightly therefore says *Seneca*, *Nil mihi frigi-*  
*dus videtur, quam lex cum prologo, Fubeat enim non suadeat lex.* And *Cicero*,  
*Cum legem dico, nihil a me intelligi volo quam imperium, sine quo, &c.*



## The Second GROUND.

Author.

*That the Nature of Man reacheth not to the Perfection of Government.*

Observ.

**I**T is true, That all Power in Government whatsoever, which is not Legal or Ecclesiastical, is Natural; yet no Government or exercise of Power whatsoever is Natural, but Rational, Politick and Voluntary. Our Author therefore, who goes about to make all Power in Government, Politick and Voluntary, and Government to be Natural, is like to have a great task of it. Well therefore may he be lost in a wood, and cry out, It is impossible for him to finde the way out, &c. He is like a blinde man, who because he is so, would perswade another that no body sees; or like a man that hath lost his way, says, There is no such thing as the high Road: Sure he thinks no man can see but with our Authors eyes, or that it was said to him, as to *Esdrae*, *Accendam in corde tuo lucernam intellectus*: Why, if he had learned his Lesson a little further in his Master *Xenophon*, he would have told him, That to govern Men, was neither to be put into the number of those things which could not be done, nor to be esteemed hard to be done, if a man knowingly handle it.

Author.

Thus much for the Contents; and as for the Chapter, let any man shew any one line of the nature of Man, or Government, what either of them is, or wherein this natural defect of Man in governing consists, and I shall be ready (if our Authors mysteries transcend not my understanding) to be his Scholar: Nay instead thereof, he tells you of *Childrens inability of judging, and of the grossness of the capacity of others*.

Observ.

What though? will it follow, because that many persons are Children and Fools, that therefore *Tho. White* must never hope to be wiser whilst he lives?

Author.

Then he tells us, *How most spend their time in business, and the Prince must trust his Physitian, Mariner, Soldier, Lawyer, Cook, Brewer, Baker, and divers other Trades and Knowledges, which he hath no possibility to understand so perfectly as to be a master in them*.

Observ.

Our Authors meaning is, if he mean any thing, sure, That the Prince is not served by the Physitian, Mariner, Soldier, Merchant, Cook, Brewer, Baker, &c. but that he is governed by them: And if it be impossible to serve two Masters, who equally command, how is it possible for a Prince to obey, and serve all these Masters our Author makes him, which have the supream power over him, the Cook, Brewer, or Baker, which are the undersorts of Governors, as he calls them *Ground 8*. And how can he be Prince, who must be subject and subordinate to all?

Author.

Our Author goes on and tells us, *Nevertheless Nature does not recede wholly from her Principle, in thus subjecting one mans understanding to another, and the greater most times to the lesser, for it does not this otherwise, then by making the party subjected, see, it is his own good to trust anothers skill*.

But

But if Government be supernatural, as the Ground saies, how can a man *Observ.*  
subject himself to another in that thing which was alike impossible to him  
and the other? Nor is it less absurd to say, the party subjected may see it  
is his own good to trust anothers skill, when as the thing to be seen is invi-  
sible, and above the sight of one and the other.

Notwithstanding this subjection our Author concludes, *That the party* *Author.*  
*subjected, is still free and Master of his own action, and the commanding part*  
*of it.* Which is absurd and a contradiction; for a man cannot be subject *Observ.*  
and free to the same thing.

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The Third GROUND.

*That a rational Ground is necessary to humane* *Author.*  
*Action.*

**W**Hat our Author means by Rationality, I do not understand, nor *Observ.*  
I beleieve he neither; for reason must presuppose something,  
before any mans Reason can operate; and this thing granted  
must be superior to Reason, and the Reason of the Inference,  
Conclusion, or discourse. And page 180. our Author saies, *God has no irra-* *Author.*  
*tional, or dead title over his Creatures.* True, but though God has no irra- *Observ.*  
tional title over his Creatures; yet cannot God have a rational or derived  
title over his Creatures. For if it be rational, or derived, then would  
I know from whom is it derived? If it be absolute, and underived, then  
how can it be rational, or what can be the reason of it? Well, but our Au-  
thor saies, *As he has none in himself, so likewise has he not given any to those* *Author.*  
*he hath put in Authority.*

And I say, that if Authority be originally in God, from whence it must *Observ.*  
be derived, then cannot it be an artificial or invented thing by our Author  
or any body else: And indeed I must confesse to our Author, that I can never  
hope for a rational belief, of ever understanding any one Proposition in  
this Third Ground; nor tell how to deduce one Proposition from it; I shall  
therefore observe nothing more upon it, then that this whole Chapter is a  
general Canting.

The



## The Fourth GROUND.

## Of the vertue of Obedience, and wherein it consists.

Author.

Of this we may easily understand what Nature intends by the vertue of Obedience, (If any ingenuous man understands one Proposition out of it, I will submit) and what are the limits and laws of it; For it is plain, that the immediate end is, that our works and all that concern us may be well done, even to those things wherein our selves have no skill, or not enough; and the more remote end to be atchieved by this, is that our life may be good and happy, and the end of nature arrived at by us.

Observ.

Wisely spoke, Lucullus! It were worth an enquiring, whether this be a definition, notion, or proposition? But whether it be sence or nonsense, our Author saies it is easie to be understood, not what Obedience is, but what the Laws and limits of it are? And then takes leave both of the Laws and limits of it, and saies it is plain, that the immediate end is, that our works & all that concerns us may be well done, even to those things wherein our selves have no skill, or not enough; and the more remote end to be atchieved by this, is, that our life may be good and happy, and the end of Nature arrived at by us. So here are three ends, and all plain, viz. the Immediate end, the more Remote end, and the end of Nature; but where the easie to-be-understood Laws and limits of Obedience are, or which of the three ends is the plain and immediate end of it, (and yet we our selves to have no skill in those things it concerns) is sure an easie to be understood, plain, and immediate end only to our Author, and no rational or intellectual creature beside.

What would our Author have? I cannot tell. Now because aswell in Theologie as in Geometry, Physick, Philosophy, and in all Arts and Sciences whatsoever, there must be *quædam postulata*, some Axiomes and Principles given, which must be so plain and perspicuous, that no exception can be taken against them, and these Aristotle calls *Indemonstrable Propositions*; for if there be any so much as *equivocation* in any of them, the Conclusions and Inferences from them must be infinitely more uncertain; And because that *Definitio est exclusio æquivoci*, before we proceed, let us define what obedience is: Obedience then is the conformation of ones will to the rules & precepts of his superior: As when a Creature conforms his will to the rules and precepts of God; or when a subject conforms his will to the Law of his Sovereign; or when a Son conformes his will to his Fathers Commands: This is Obedience, and he that does not obey, sins.

Author.

Well our Author goes on and tells us, *The Conditions are three.*

First, *That the matter of the action be such, as our selves are not sufficiently skilful in;* and yet Ground first, he says, *The perfection of Government is to make the obeyer understand.*

Observ.

Secondly, *That our Commander be a Master in that Art.*

Now how can I tell whether my Commander be skilful, in what I do not understand?

Object. Why, he tells you in the precedent Ground, *That I must trust my Lawyer and my Physitian, though I be neither.*

Answer.

*Ans.* True, but I am not bound to this Lawyer, or that Physitian; but in case of subjection, I am bound only to my Prince: Nor do I sin, if I follow not the advice of either; which I do, in not obeying my Superior.

Thirdly, *That he be an Honorable person in whom we deal.*

Our Author, no doubt, is a wise Fellow, and likely hopes that he or his Patron may be this Honorable person, when this Fustian shall be acted. Now here let any man see, (if any thing may be collected out of this mystical nonsense, or what follows hereon in the two next subsequent pages) whether our Author does not make Obedience to consist on the Obligors part, in conformity to a delegate and subordinate power of their own making: As if I give my Servant power to receive my Rents, or my Bailiff power to oversee and order my grounds, which my Servant and Bailiff do, that then I obey my Servant and Bailiff. Well therefore may our Author say, that it is a fallacious principle, to maintain *Obedience to be a principal vertue*, since he understands no better: Why then I will tell our Author, that, at worst, 'tis better then the *Sacrifice of Fools*, and therefore better then any thing he can say or do without it.

Author.  
Observ.

Pag. 22.

But how mean a thing soever he makes Obedience here, yet he rarely keeps long in a mind to any thing; for, pag. 98. he says, *We know, by consequence, how excellent a vertue this act of Obedience is; having a motive of so great a price and high elevation above other ordinary employments, which reach no farther then to his private good.* And then most senselessly he confounds the offices of Command and Obedience; and as absurdly prefers the obedience of the Commander, because it is not commanded or limited, before the idiotical good of the Subject: observing the same method in Obedience, as he does in his Laws; sometimes they are the Peoples Laws, which restrain their Supreme Trustee, or Governor; otherwhile they are the Trustees Laws, who may with our Authors licence at other times do what he list. Such plain, certain, and easie to be understood things, are our Authors Laws and Obedience.

Ground 12.

But oh, our Authors Will is such a thing, (as you know who rage and are most confident) that by no means he will part with it: 'Tis all a case to him, whether there be a King, or no King in Israel; for he will do what is right in his own eyes. For our Author says, *In renouncing the power of our Will, we renounce our Understanding also.* Our Author for his part needs not fear it; but sure he fears that if he do so, (because he cannot hope that he is qualified enough to be a Privy-Councillor) that he has bound himself up from dabling with the *Grounds of Obedience and Government*. Why, he should do well to be of Counsel with *Adam* against God, for the Devil and he agree in the same thing, *viz.* That it is not liberty enough for *Adam* to eat of the other trees of the garden in Eden; no, *Adam* must not renounce his will and understanding too, in order to his chiefest good (the knowledge of good and evil) and making himself like unto God, by tasting the forbidden fruit: To our Author it is not liberty enough, for the Subject to square his actions to the Laws and Rules of his Country; he must not renounce his will, to be commanded by King or Laws, but must have his will too in making of Laws. Now let our Author tell me, what a Government this is like to prove: Who will hold the plough, that is perswaded he may handle the scepter? Who will live in an obscure cottage, that hopes

Pag. 25.  
Observ.

he



he may govern at the helm? or eat his bread in the sweat of his brows, who may expect to fare deliciously every day? And now let me tell our Author once for all, That humane Laws are made to retain Subjects in their obedience, lest a worse thing happen unto them. There must be no starting out, or breaking loose from them: For, Laws are like the banks which encompass waters; if there be the least hole in them, the banks will be blown up, and the waters lose themselves.

### The Fifth GROUND.

*That Fidelity is different from Obedience, and wherein it consists.*

**N**OW some good body help a lame Dog over the stile! Here we find our Author taking monstrous pains, and in a great sweat; why what's the matter trow? What! Our Author undertakes to shew, that *Servants owe their Masters no obedience, but fidelity only.* And this he would prove by a mighty argument, viz. *A man buyes a piece of Cloth or other merchandise of another, and pays for it; And therefore Servants owe their Masters no obedience.* And if this will not do it, his *ipse dixit* must, or he loses an essential ingredient towards the patching up of his Fools paradise. Now herein our Author and I differ, (and I fear we shall never agree in any thing: ) Our Author will trust his servant, where he expects no obedience; and I will make my servant obey me, whenas (it may be) I will not trust him for a groat. And indeed our Author will do more for his servant, then I see in reason any man should do for him: For, pag. 141. he tells us, *In pure Morality he may falsifie and break promise, if he save any thing by it, and is better then his word.* I shall say no more in answer to this Ground, but object the authority of the Holy Ghost against it, *Ephes. 5.6. Servants be obedient to them that are your Masters according to the flesh, &c.*

### The Sixth GROUND.

*In what consists Right or Due.*

**H**ERE our Author says, *The next Consideration may appear too Metaphysical a Nicety for a Moral Treatise:* Yet he armed Cap-a-pe in compleat Ignorance, valiantly attempts it, and will tell you of I know not what, of *Reason, which takes nothing to be good, but what is good for a mans self; and makes it the rule of his actions, to do what is fitting for him, or conformable to his, that is, to a Rational nature.* But this is a rule by which he treats Horses, Dogs, Trees, and Stones, &c. and runs through all his actions.

Well: But since the men of this world were never more unreasonable, and every man so pretending to Reason, and yet no man almost can tell

tell what he means by Reason, let us see what *Ratio*, Reason is; and what Reasoning is; and why Man is onely said to be a reasonable creature. Reason is properly that power of the soul, by which a Man is discerned from other living creatures, and by which he does excell and command them: By *Horace* it is put for the reasoning and discoursing of the soul, for finding out what is true; *Ratio ponitur pro ratiocinatione & discursu animi, ad investigandum verum. Cicero lib. 2. ad Heren. Ratio est causa quæ demonstrat verum esse id, quod intendimus brevi subiectione*; Reason is the cause which shews that thing to be true, which we intend in a short view: And Reason is many times equivocally used for Counsel, as *Cicero in Verr. Mea quidem ratio, cum in præteritis rebus est cognita, tum in reliquis explorata & provisæ est*; My counsel is as well known in things past, as throughly tried and provided in other things. Sometime for Respect; *Habenda est ratio honoris*, Men ought to respect their honor. Sometime for Care; *Habenda est ratio rei familiaris*, Men must look after their household-affairs. Sometime for Business; *Rationem habet cum terra, quæ nunquam recusat imperium*, He busieth himself with his land which never disobeys him. Thus far *Calpine*. Sometime it is taken for Account, *Lu. 16. 2. Redde rationem villicationis tuæ*, Give an account of thy Stewardship. *Ratio*, in the third Definition of the fifth Book of *Euclide*, *est duarum magnitudinum ejusdem generis, mutua quædam secundum quantitatem, habitudo*: Reason is a certain mutual habit, of two magnitudes of the same kind after their quantity: As when two Quantities of the same kind, two Numbers, two Lines, two Superficies, two Solids, &c. are compared one to another, according to their quantity, that is, accordingly as one is greater, less, or equal to another; this comparison or mutual habit of one to another, was by Geometricians called *Ratio*. But now, I know not by what habit or custom, *Proportio*, (which definition 4<sup>th</sup> lib. 5. *Euclid.* is, *Rationum similitudo*; And definition 5, consists in three terms at least, for indeed it must consist in four; for where it is in three, the *medium* is iterated twice, as what proportion four hath to six, six hath to nine, &c.) hath eaten the former quite up, and is only used.

Or take Reason thus: Reason is that by which men from given Principles, do rightly infer and deduce Conclusions. And Reasoning is twofold, either *a priori*, or *a posteriori*: *A priori*, from the cause, nature, and matter of necessary truths, to shew what effects follow from thence; and such Propositions are called demonstrative or scientificall, shewn and known from the Causes; such are all Propositions in Geometry and Mathematicques: Or when the Effect is certain, and the Cause probable; and these are but probable Conclusions, such as those in Philosophy and Physick. As I would know the reason why Summer is hotter then Winter, for so I find it to be; why, thus I reason: It cannot be from the propinquity of the Sun to the Earth, in Summer more then in Winter, for the Earth is but a Point in proportion to the Universe; besides, the Sun is nearer to the Earth in Winter then in Summer, for the *Orbis magnus* is not Spherical or Circular, but Eccentrical and Elliptical, which is plain, because the revolution of the Earth, or the Suns motion, is finished in less time from the Autumnal Equinox to the Vernal, then from the Vernal to the Autumnal, and therefore nearer to the Earth in Winter then in Summer. It is not then from the Suns nearness to the Earth, which makes the Summer hotter



then the Winter; I find, that the higher the Sun rises in our Horizon, that is, the nearer it comes to our Zenith when at the Meridian, the hotter it is: I therefore probably conclude, that the heat in Summer is caused from the reflexion of the Sun; and the nearer the *radii* are reflected to right angles, the hotter it is; and the more obliquely they are reflected, the colder it is. Or as when a Physician from the symptoms of his indisposed Patient, endeavors to find out the causes of his distemper, &c. this is reasoning *à posteriori*, from the effect to find out the cause: And men may reason from uncertain and false Principles, as well as true, but then always the Conclusions are so. And therefore all *Clavius* his Demonstrations in his Practical Geometry, and at the end of the sixth Book of *Euclid*, of the Quadrature of a Circle, though the Demonstrations be truly deduced, are uncertain, because it does not certainly appear, That from the imaginary motion of the two right lines he there speaks of, the Quadratrix line does cut the Base so, that the side of the Quadratrix is a mean proportional between the Base and the Arch of the Quadrant. And the Inferences and Conclusions which have caused so much confusion and distraction in these times, are drawn from feigned and false Principles. But in all true Propositions whatsoever, no reason can be given for the first grounds and principles of them, but only the will of the great Creator of all things, who therefore so made them, because it so seemed good unto him.

Of all the creatures upon earth, Man only is reasonable, for Man only contemplates God, and looks up to heaven, as thence expecting his beatitude. *Ovid. Metam.*—

*Pronaque cum spectant animalia cætera terram,  
Os homini sublime dedit, cælumque tueri  
Fussit, & erectos ad sidera tollere vultus.*

And a little after,

*Sanctius his animal, mentisque capacious altæ  
Deerat adhuc, & quod dominari in cætera posset,  
Natus homo est----*

Only Man, from universal causes, can by Reasoning (the faculty of his understanding and memory) rightly infer and conclude from them; only Man has freedom in his will of doing, or not doing, and may (if it be not his own fault) in all his actions, let his Will be informed by his Understanding and Reason: whereas other Creatures do all things spontaneously, that is, by an impulse of Nature, as they are moved by their objects or fears. Therefore only Man does well, and only Man does ill; and only Man is happy, and only Man is miserable.

Author.

But our Author goes on and tells you of a Tailor and a Mariner, and I know not what indeed, and concludes, *That now not the nature of two men, but their words and what follows out of them, ground their being active and passive: This power of activity is in Latine called Jus or Justum; in English, Right or Due.* Our Author says before, *He that makes a promise to another man, puts himself and his Promissary into a rank of agencie and paciencie, upon a new score, to wit that of Fidelity and Negotiating.*

Observ.

Did ever man huddle up so much insignificant bumbast as here is, or who in this world did from hence ever claim any Right or Property in any thing?

thing? Well, let us see then what we understand by *Right or Due*. Right or Due, is what any Man or company of Men claim to be his or theirs, excluding all their fellow-Subjects. And this Right, Due, or Property, we nowhere find to be given by God immediately to any Man or Men, but only the Land of Promise to the Children of *Israel*, the Portion of whose Inheritance fell to them by Lot. And by Nature no Man has any property in any thing, more than another, if it be true as *Cicero* saies, *Privata nulla natura*. And *Horace*,

*Non propria telluris herum natura nec illum  
Nec me, nec quenquam statuit.*

What then gives it but the Law or Supreme Power of the Nation? for *Martial*,

*Hoc lege quod possis dicere, jure meum est.*

### The Seventh GROUND.

*Why Men desire to live in Community, and of the necessity of Government.*

**H**ere our Author tells us First, *It is fit to understand why Men desire to live in Flocks and Multitudes.* Author.

Now would I know of our Author, what these Men are, and where to be found, who desire to live so? Or when did Men ever in the World in any place, either live, or desire to live so? Indeed it is a received opinion, that Man is born a living Creature, apt and fit for society; the Greeks called him ζῷον πολιτικόν, but indeed no Man does naturally desire the society, company or conversation of another Man, because he is a Man; and therefore Men do not, nor ever did live promiscuously in flocks and multitudes (as our Author saies) without subordination one under another; but in any the meanest and most contemptible Family that ever was, the company are not all alike to one another, as those are which live in flocks and herds, &c. But because no Infant can live, nor any Man live well without the help of another, naturally there is in every Man a solitude how to live, and so to live that his living be not a burden, or troublesome to him. Man does not therefore desire the company or society of others as men (for then he would desire the company and society of all men alike, of Good, of Bad, of Vertuous, of Vicious, of Servants and Vile, as well as Noble and Generous) but accidentally as expecting Profit, Honor, Knowledge, &c. from him or them with whom he consorts or associates himself. And therefore on the Exchange, in Faires, Markets, &c. Men do not Meet so as only to see one another, and to make up such a Herd, for then they would meet in other places as well as there, but that from their buying and selling and their exchanging of Merchandise, they may derive from thence profit to themselves. It is an admirable thing to see what a strange Ingenuity there is in those men, in acquiring those things from other places, which Nature (by the sterility, negation, &c. of their own Country, (for *Non omnis fert omnia tellus*, )



hath deprived them of, above those Men who abound in their own, and are careless to seek to supply their defects from elsewhere; as we see in *Holland and Zealand*, the Corn, Butter, and Cheese made in both those Provinces will not maintain the twentieth part of the Inhabitants: yet when did ever any man here in *England* see Corne, &c. dear, but we were supplied from thence? and what place in the World is there, which though above twenty times bigger then both those Provinces, is equal to them in shipping, and yet have scarce a stick of wood growing in either?

And men prefer that society wherein they suppose themselves honored and esteemed, before that wherein they think themselves slighted and neglected; and where Youth and Vigor do abound, there Men seek to them who will consort to them in Hunting, Hawking, Shooting, &c. as they affect this and that for their exercise: And vicious Men will endeavor to find out such society as will excite and accompany them in those vices to which they are prone: And because only Ingenious Men Philosophize, therefore Ingenious Men will not willingly consort themselves, but with them from whom they expect either to learn, or to be esteemed more Ingenious or more learned than any in the company; For naturally every Man desires that from conversing with another, he may draw more Profit, more Honor, more Pleasure, more Learning, &c. to himself; and when he has so done, he is so far from being satisfied therewith, that he betakes himself to solitariness how to increase what he has got into more, which no other creatures which live in companies doe, but when they have eaten up all in one place, seek where they may devour it in another.

Author. Our Author goes on and tells us, *The first community is of Man and Wife,*

Observ. Our Author is the first man that ever I heard of who desired to hold his Wife in common.

Author. Our Author afterward tells us, *That the first Origine of Mens meeting and living together, is, that Men are most burthensome to themselves when they are alone, and seek company to divert themselves, so to elude the length of time.*

Observ. So that he who cannot tell what to do, but is a burthen to himself, may keep company with our Author so to foole away the time. I have seen many Chandlers Bills with all *Items* in them, but never saw any Section mangled with three *Firsts* altogether, but here in our Author.

Author. Now our Author is got loose from his *Firsts*, and arrived at the next, which is, *That God and Nature have so managed mankind, that no one has of himself as much as he desires, but regularly aboundeth in one kind of goods, and wants some other which his neighbour has.*

Observ. Now, who is he of whom our Author speaks? Why, one of his rational multitude (as he calls them by and by) before they have chosen a Trustee; what's here to doe? Why his rational multitude have all things in common one with another, no one abounds in any one thing more then another, but are like swine feeding, eating, and promiscuously herding together, or a kennel of Hounds devouring a dead Horse, who have it all in common, yet no Dog any more right to any piece of the Horse than another, but as he gets it and eats it.

Author. In the third place comes Fear: *For he that finds himself stored with those things*

things which he and others love, is subject to feare those whom he suspects able to bereave him of them, and so seeks company of friends for protection.

Now would I fain know of our Author, how this Man of his Rational Multitude came by these things, he so fears to lose? Why, has not any of his Multitude as much Right to them as he? Sure he must have surreptitiously cheated or stolen them from the rest of the Rational Multitude, for I cannot see what other Right he can have to them; It may be though it is not too Meaphysical a nicety for a Moral Treatise, and our Author can resolve you; and let the Reader read on and see, how he prefers the passion of Love before that of Feare, which he saies agrees both with Philosophy and Morality.

Now our Author got within sight of Land, there's now nothing wanting but that the Rational Multitude name their Trustee, who ought rather to be a good and a wise Man, then a Foole and Knave, and our Authors Government is perfect; yet for feare lest no Man but should understand it, in conclusion he tells you, *You see Government is naturally a Power of directing the Common Affaires of the Multitude, by a voluntary submission of the Communities wills to their Governors.*

Now will I be burnt if ever any Man proclaimed himself such a Cockcomb as our Author does all along this ground; In his Three Firsts, then in his holding his Wife in Common, in his Care and Feare for the goods of the Individuals of his Rational multitude, who possibly could have none at all, and now by the giving up of theirs to the will of their Governor, which thing (Ground 4.) he cannot see how it can be pleasing to God, nay he tells you, 'tis like a Mans mangling himself, or Origen's guelding himself, or Simeon Styletes chaining himself to a Hill, that he might not go thence for Gods sake: But it may be our Author has a help at Mawe; for our Author Ground 8. saies, *It is evident by this Resignation of the Peoples will, the Magistrate receives such an activity and power, as he has explicated before, did arise out of a mans promise to his Neighbor.* So then, a Man may mangle himself, Origen may gueld himself, and Simeon Styletes may chain himself up to a Hill, though not for Gods sake, yet so far as it does arise from their promise to their Neighbor. But unless a Man should affect mistaking; I think of all men, our Author is most accursed to it; for now he makes his Rational Multitude a people, when they have made their Trustee or Supreme Governor; whereas, other Men alwaies understood by the people, them who had assumed the Supreme Power in them; As when a Man saies, the People of Athens or Rome, he meanes them in whom the pretended Supreme Power was, and by the Multitude he means, them in whom the Supreme Power was not.

Now is our weary Trojan arrived at his wished shore, having sung his Paean and erected a Trophy, says, *No moderate and discreet person can doubt, but a Government so ordered, is both necessary and connatural to a rational multitude, and in a word, such as Humane nature requires, and is the best, if not the onely that sutes to the disposition of freemen and prudent.*

Yet sure, if after all this glorious boast, this Peacock but looks upon his feet, he will let fall his tail; for his Second Ground is, *That the nature of Man reacheth not to the perfection of Government:* But what does our Author here mean by Freemen? if by Freemen he understands men free to do what they list, then our Author leaves them as he found them, and has done nothing



nothing at all; but if these Freemen be subject to their Trustee so far as he apprehends it fit and necessary for the good of the Commonwealth, then I believe we shall finde them as very slaves as any our Author (*Ground 9.*) makes: So that after all this ado, our Author has made a multitude of slaves, or he has made nothing at all.

And thus hath our Author endeavored to shew, why men desire to live in Community, viz. By having nothing common at all.

### The Eighth GROUND.

#### Of the Authority given to an Absolute Governor, and of Under-sorts of Government.

Author.

**N**OW comes our Author with a dog in a line, his *Absolute Governor* tied up to certain Laws and Limits, which he has no right to transgress.

Observ.

Plutar. in vita  
Fabii & Liv.  
lib. 22.

What is this our Authors *Absolute Governor*? Why, the Roman *Dictator* was worth ten of this; for he had power of life and death, of disposing of all Offices at his own will and pleasure, without the controlment of any either Senate or People, Consul or Tribune, and this power to continue during the exigence and danger of the Commonwealth. Yet so far was the *Dictator* from being an absolute Governor, that he was the while but a Minister of the Peoples; which was plain in *Fabius Maximus*, for though he were chosen *Dictator*, yet during the danger of the Commonwealth, the People made *Minutius* equal to him. And so was the *Athenian Archon*, who though chosen for Ten years and called a Judge, and chiefest of power in the Commonwealth, yet as *Bodin* observes cap. 8. fol. 80. de repub. was not the Majesty of the Commonwealth in him, but he a Provider and Procurator of the People, and was bound to give an account of his Government. And the reason why the *Dictator* and *Archon* were not absolute Governors, is plain, because this power was not immediately in them from God, but delegate and constituted from another; And any power that makes any thing, may alter it; for, *Unumquodque dissolvi potest eo ligamine quo ligatum est.*

Well, but let us see what manner of beast our Authors *Absolute Governor* is. Why, our Author tells you, he is an *Absolute Governor*, but restrained and tied up to certain Laws and Limits. Which is a contradiction and impossible; for in being absolute, he is freed from all Laws and Limitations. And now I will tell our Author, that if his absolute Governor be tied up to any humane Limits or Laws, he has so little power, that it is impossible for him to protect and defend his rational people: For suppose the Laws he is restrained to, be as many as are contained in the body of the Civil Law, our Statutes, and all the Acts and Ordinances made since 1641. and twenty times more, yet would not this be sufficient for an absolute Governor: For all these are finite, and mens actions are infinite; and therefore Enemies may find out such ways to invade this free people, as this absolute Governor cannot find in his Laws, where he has power to oppose them; and

and so this rational freeborn people must be left destitute, if any Enemy may be found who can outwit them, and find a way to oppress them out of the Laws and Limits which they have given their absolute Governor. And who will desire any greater advantage against another, then to have him look always one way? or what Enemy desires more against another, then against such a one whose absolute Governor is tied up to certain Instructions, and those known to themselves? And Laws are things which must be *in esse*; And how can any man tell to day, what may happen to morrow? but Princes must to morrow, and next day, and every day, steer their course according as the wind and storms, shoals and deeps, &c. represent themselves, which no man can possibly foresee.

Well, let us see what the restriction of any one thing in the *Supream Prince*, may bring upon himself and Subjects? Let us look upon a *King of England* after the Act of Parliament, *De tallagio non concedendo* (an Act of Parliament, is the Act of the King in Parliament, As when the Lords and Commons present any Bill to the King, and he passes it; this is an Act of Parliament, which is no more a Law of the Lords and Commons, then the Laws passed at the Petition or Rogation of *Cælius, Cassius, Sempronius, &c.* were the Laws of *Cælius, Cassius, and Sempronius.*) And let every King expect, that whatsoever the Subject can get of the King by hook or crook, he will hold that as fast, as the King shall any flower he leaves in his Crown.

Well then, if *Edward* the First will not pass this Law, he gets not a groat of his Subjects in *England* towards the relief of his oppressed Subjects of *Aquitain* in *France*, which Sir *Edward Coke* in his Comment upon this Statute observes.

Well then, the *Scots* in the year One thousand six hundred and forty (having transgressed all Laws of God and Humanity, as well as the Borders and Bounds of their own Countrey) raise Arms the second time, and make an invasion upon us, and seise upon *Berwick* and *Newcastle*; (but though the *Kings* hands were tyed up, yet the Divine Vengeance of Heaven shall overtake them and their Countrey, by a hand they could so little fear, as I believe few of them knew whether there were any such, or no.) And now oh you! who have not forced all mankind from Humane breasts, come and stand amazed with horror for the most deplorable condition, of the most Pious, the most Religious, the most Just, the most Chaste, Vertuous, and Serenest Prince, that ever swayed the English Scepter, and not to be parallel'd by any Countrey whatsoever?

The *Scots* having invaded this Nation to treat with them a second time, was too too much an indignity for their Natural Sovereign; besides, it was an affront not to be endured by the Englishmen, That their Countrey must be made a prey to such Locusts and Caterpillers, whensoever they will pretend grievance in *Kirk* and *Discipline*: To restrain them by force, it could not be without raising money; By this Statute the King, they say, can raise none, but by Parliament; and to call a Parliament in this mad conjuncture of times, was judged by himself and Council, to be a means to increase the power of the *Scots*, by the Parliaments joyning with them, to the endangering himself and his Posterity.

Well then, what is to be done? what stand still and look on, while these hungry Vermine devour and make a prey of his afflicted Subjects?

No,



No, the King to make his goodness appear above his own danger, calls a Parliament; where not deceived in his expectation, the *Scots* and they are *Simcon* and *Levi* straight, sworn Brethren; and the first thing agreed between them was, That Humane Blood must be offered up to them; (a preparative to a greater Draught) nor must *Strafford* suffer by an ordinary way of Judicature by his Peers, but that the King may be involved in the same Crime with themselves, he must die by Act of Parliament; and then having made the King to divest himself of all possible power to defend himself, when ever they will strike him, they give the *Scots* Three hundred thousand pounds to be exported out of the Kingdom, because they had made a prey, and devoured the goods of their fellow Subjects in the four Northern Counties, which (forsooth!) these good Saints call *Brotherly Assistance*.

See, oh see here, O my Countrymen, the Assertors and Avengers of the Honor of the English Nation! These are the Noble Patriots of their Priviledges, I am sure not of your Liberties! These are the glorious Reformers of our Church and State! These are they who in order to so many Protestations, Declarations, Swearings and forswearings, have made *Charles* a more glorious King then any of his Predecessors, more feared abroad and more renowned at home!

And now tell me, whether you had not better at first have given your pence and your two pences, then paid your pounds and forty shillings since, you knew not for what. Nor was our case much unlike the case of the *Constantinopolitans*, who alleaging Poverty and Priviledge in opposition to their Safety and Defence, became a prey to the *Turks*, 1453. their most merciless enemies, who put them all to the sword; the *Turks* themselves wondering there should be so much wealth in the World, as was found in the sacking of this one City.

## The Ninth GROUND.

### Of Slavery, and the lawfulness of it.

Author.

**H**ERE our Author tells us, *We must first look into the notion of Slavery, which signifies a Subjection to command in all things, and that merely for the Masters profit.* Well, I will not quarrel with our Author about the notion of Slavery, but tell him, he mistakes it in all his specifications of it: For his first, *It is, he says, clearly against nature for a man to submit his will so far, as to renounce his eternal bliss.*

Observ.

This is out of his notion, and is so monstrous, as it is not imaginable any man should do it but Witches; and any man may chuse, whether he will do it or not, for no mans will can be compelled.

Author.

The like he conceives of *Subjection to be killed or maimed causelessly, nay, or to be so penuriously abused, as to have no content in life;* and the reason he gives, is, *It is evidently against the inclination of nature, to consent to the loss either of life, or the profit of life, which is either to be well in this world, or the next: And therefore it cannot be conformable to nature, to renounce either,* (so then

then a man must not by our Authors rule, renounce any depraved affection or appetite in him, if it conduces to his profit in this life) especially the quiet in this world, being the means to gain bliss in the other.

And so our Author hath shut out of doors all suffering for the testimony of a good Conscience, because the quiet of this world, is the means to gain bliss in the other. Observ.

Nor does it scare our Author, he says, to cast his eyes upon so many holy men and women, as have put themselves voluntarily upon penurious and painful lives, because they enjoy the fruit of contemplation, and sweetness of Conscience in expecting a great reward for what they did: But for a man to renounce the content of this, who either thinks not of another, or at least hopes nothing out of his resignation, this must of necessity be extremely irrational, and against nature. Author;

Why, if our Author had learned thus much out of the Poet, Observ.

*Oderunt peccare boni, virtutis amore;*  
*Oderunt peccare mali, formidine pœnæ.*

Horace.

He needed not to have thought it so irrational; for if the love of Vertue will not make men do their duties, the fear of stripes and halters must, or our Author will not get Paper to write his *Grounds of Obedience and Government* upon. Our Authors next specification, is no more then every servant ought to do.

Now let us see what *servitus* or *mancipium*, or servitude is, and who are properly Slaves, or as we use to term them, Vilains.

Slaves happen (Bodin says) to be so five ways: Either by birth, as the posterity of the Parents who are so; or accidentally, as prisoners taken in war; or thirdly, those who for some offence or debt are condemned to slavery, either for years or life; fourthly, they who voluntarily make themselves so; and fifthly, those that are sold by Theeves and Pirates, are for the price paid slaves, to the buyers: But whether this last be truly accounted slavery, is disputable, that is, Whether such buyers may use them as slaves or no. See more hereafter, *Cap. Domestic Power*. Bodin, cap. 31  
lib. 1. de Re:  
pub.

Now Slaves have nothing properly, but whatsoever they get is their Lords, who may sell them or give them away at their pleasure, and have power of life and death over them. (Here in England the Lords power over their Vilains was restrained, neither might the Lord maim his Vilain; for though the Vilain could not recover any damage against his Lord, yet after Attainder the Lord was finable to the King) See *Litt. 194*. And the Neife (who is the Vilains Wife or Daughter) might have an appeal of Rape against her Lord, *Litt. 190*. But this not being a condition for any one who bears the Image of God upon him, God did restrain it, *Levit. 25. 39*, to them who were not *Israelites*, or *Profelytes* onely: Wherefore I conceive that neither *Mahometans*, *Jews*, or *Christians* (all acknowledging the Moral Law) do not make Slaves of any who are of their Faith and Religion from this ground; neither do I understand how the use of Vilains used with us heretofore, can be justified, if they were *Christians*; for no question *Christianity* makes not men in a worse condition in this world, then if they had been *Jews* or *Turks*. What difference the *Romans* made between Slaves and Libertines, and what Manumission is, and how many ways Slaves become free, read *Bodin de Repub. cap. 5. lib. 1*. And of Manumission or En-

D

franchising



franchising of Villains, read *Littleton*, and *Com.* of Sir Edward Coke thereon, *Cap. Villenage*.

Author.

And now our Author tells you, *how a Nation may enslave it self by its too much wit*; and most prudently and wisely takes care that it be not our case. And so goes on very prettily in Questions and Answers; as, *Whether any Nation be by nature born to slavery?* of *Joseph*, and the Nation of *Egypt*; of a Nation and Nature, and how like Nation sounds to Nature, (*Gens to Natura*) and at last concludes, *Out of this Conclusion it is easily seen, that the Turkish, Muscovitical, and other whatsoever Governments settled upon this principle, That the goods and lives of the Subjects are the Princes, not to defend (as our Laws go) but to dispose at will, &c. neither do, nor can breed any obligation of Obedience in the Subject, more then of Fear, and present Utility.*

Observe.

It seems then, neither Fear nor Utility may be expected from our Authors Laws, with which his absolute Trustee is impowered. And what other means (besides the law of God which commands us to be subject to the higher Powers, *Rom. 13.* and *S. Peter, 1 Ep. cap. 2. 13.* To submit our selves to every ordinance of man for the Lords sake, whether to the King as supreme, &c.) can any Governor propound to his Subjects for their conformity to his Laws, but utility and reward for their obedience, and fear of punishment for their disobedience?

And here our Author calls them *Tyrannical, &c.* What's the matter? Have they too much power? They have no more then God hath given them; and in having less, they should soon actually have none at all, and Aristocracies and Democracies assume as much; Do they eat too good meat, or wear too good clothes? Why sure Nature intended that the best things should be used, and who better use them then the King? What, are many of their Subjects poor and miserable? 'Tis not their fault; 'tis the curse of God upon the ground for *Adams* sin in not giving up his will to Gods command, that in sorrow man should eat of it all the days of his life, *Gen. 3. 17.* And if any of these Tyrannical Governors (as our Author calls them) should divest themselves of all their power and greatness, yet there would not be fewer poor laboring men: And let our Author shew me in any of these Governments half so many Slaves and miserable men, as I will shew him have been under the *Romans* and other popular States. Nor need any man in any of these be a Slave, if he will become *Renegado* to his Faith and Religion; whereas under the *Romans, &c.* they were necessitated to it at the will of their Lords. Will they, if they fear the power of any man to grow too great, use means not fully warrantable in the known Laws, either to make it less, or none at all? why, the *Portian* Law prescribed only banishment to the Citizens of *Rome*, in any offence; yet *Cethegus, Lentulus, Longinus, &c.* were put to death for being agents in *Catilines* Conspiracie. The *Athenians* would by their Ostracism banish any man that they but suspected would grow too great. Will they make unjust war without any cause given? why, the *Romans* undertook the protection of the *Mamertines*, (*Livy lib. 16.*) a company of \* Hellhounds who had murdered their Hosts the *Messanians*, and took possession of *Messana* against the *Carthaginians*, which was the ground of the first *Punick* war. And when *Greece* was divided amongst *Athenians, Lacedemonians, Arcadians, Corinthians, Achaeans, &c.* when was there any faith or troth among them, but the weaker still bandying against the stronger, till they were all brought

\* Sir Walter Raleigh, book 5. ch 3.

in subjection to *Philip* the father of *Alexander*. Will they put men to death upon no sufficient proof of crime against them? why, what proof of suspicion of crime was there against the most excellent and divine Philosopher *Socrates*? or against the victorious Athenian Captains at the battel of *Arginusæ*? Will they not reward their good Servants and Caprains? what reward had *Camillus*, *Coriolanus*, both the *Scipio's*, *African* and *Asiatick*, *Themistocles*, *Alcibiades*, *Hermocrates*, the noble *Syracusan*, *Dion*? &c. Will they take severe revenge upon their enemies, although it may be they had no just occasion given? The poor *Melaens*, who were content not to have meddled in the wars between the *Athenians* and *Lacedemonians*, and no occasion of war against them but the will of the *Athenians*, after they were forced to yield up their City at discretion, were all of military age slain, the women and children made slaves, and *Melos* made a Colony to Five hundred of these cursed Demagogues, as you may see at the end of the 5. book of *Thucydides*. And see *Plutarch* in the Life of *Sylla*, what came upon the *Athenians* who first called the *Romans* into *Greece*, when *Sylla* took *Athens*. Will they take severe revenge, where (as our Authors calls it) the obeyer does not understand that it is his own profit which the action aims at, (that is to say, when the Subject will not obey?) Let him see the fate of the Caprains in *Livy* lib. 26. and of the *Mytileneans* and *Scionians* in the 3. and 5. book of *Thucydides*. What, do they not govern their Subjects in peace? Where was there ever any such dissention and confusion as in *Democratical* and *Aristocratical* States? And the *Grecians* have seen less war and disquiet two hundred years together under the *Turk*, then ever they saw in three years, when it was divided into so many *Aristocracies* and *Democracies*.

See Dio Siculus Bib lib 13. Where the Syracusans, before Dionylius his time, made it their pastime to reward the vertue of their worthiest Commanders with death or banishment. And Nicias lost the whole Athenian Army in Sicily, consisting of above forty thousand men, for fear if he had preserved them, he should have been proscribed or put to death by the Athenians. Thucid. lib. 7.

But our Author will not endure that the Subject should be protected in his life and estate by the Law of these Tyrannical Governors. Why, what greater obligation of obedience can there be to Government on the Subjects part, then that he is thence protected in his life, and from thence holds whatsoever may be called his? And since there never was, nor can be a fourth species of Government, how much better is it for a Subject to obey one Individual Prince, then by an imaginary liberty to make his obedience to many? for, *Quanta molis erit, dominis servire duobus?*

Well, but let us compare one of these Tyrannical Governors with our Authors *Absolute Governor*; (For though our Authors *Absolute Governor* be a Mungrel, extracted from equivocal generation, and such a Beast as Nature never intended, and (Ground 8.) tied up to certain Laws and Limits of the People, yet for all that, our Author can have a course too with his *Lycifce*, though tied up in a line: But then it must be agreed between our Author and his *Lycifce*, that they say it be for the good of the People; and then (Ground 11.) they are his Laws, (alack the while, what is become of the Peoples Laws! &c.) And (Gr. 13. p. 101.) *The lawfulness of a Sovereign Commander is no other, then that he truly thinketh to be for the good of the Commonwealth.*

Author.

So now, Casting of Dollars, and Coining of Dollars, is all the difference between our Authors *Trustee*, and one of these *Tyrannical Governors*; the same thing differently called by the Author.

Observ.



## The Tenth GROUND.

*Why a Man is to hazard himself for the Common good?*

I Ndeed herein (for ought I know) may be much Treasure and Learning; and there let it be, for I never intend to look into it.

## The Twelfth GROUND.

*Who is such a Governor, and the Subjects Duty towards him.*

Author.

WE have long talked of a Supreme Governor; it is time we should point him out, that he may be known. And since all agree that there are three sorts of Government, Monarchy, Aristocracy, and Democracy; when they are simple, there can be no doubt who is the Supreme Magistrate. Now mingled they may be, either continually, as when all parts mixed are so often engaged that their Authorities run jointly, or else some are continual, others but at certain terms.

Observ.

Our Author has talked long indeed, and to very little purpose of his Supreme Governor, and now he thinks it high time to point him out, that he may be known; and he thinks he has already so sufficiently described him, that any Ingenious Rational Man may easily discern him, and so takes leave of him, and tells us, All agree there are three sorts of Government, Monarchy, Aristocracy, and Democracy, and that they may be mixed: May they so? Then sure they may be more than three, viz. Monarchy, Aristocracy, and Democracy; Monarchy mixed with Aristocracy, Monarchy mixed with Democracy, and Monarchy mixed both with Aristocracy and Democracy: Aristocracy mixed with Monarchy, Aristocracy mixed with Democracy, and Aristocracy mixed with both; and so Democracy mixed with Monarchy, Aristocracy, and both. So that either these three sorts of Government will admit of no mixture, or else there may be above three sorts of Government.

Author.

The next stumble (for steps our Author makes none) is, *What Monarchy is, if it be mixed* (but if it be mixed, how can it be Monarchy? for *Regia Majestas est indivisibilis*) with Aristocracy or Democracy, so that they be continually joint Actors, the Monarch is but a Servant, and the other part the Master.

Observ.

Could any Man give a name to this Government, it must be either Aristomarchy, or Demo-monarchy, in plain English the chief Government of one Man alone, or the People-Government of one alone, but this is, our Author saies, but only when they are joint Actors, and then the Monarch is but a servant. Did ever any Man talk so senselessly, as if he understood neither words nor meaning?

meaning? for Monarchy is the Government of one Person alone, which is impossible if it be subservient to the Government of any Court or People, unless our Author can make a Court or People not consisting of Men. Nor is the Instance he gives of the *Italian Dogs*, and *Lacedemonian Kings*, any thing to the purpose; for who in the World ever heard of the Monarch of *Venice*, *Genoa*, or *Lacedemon*? It is true indeed that *Euristhenes* and his Brother *Procles*, the Sons of *Aristodemus*, Grandchildren of *Cleodans*, Great Grandchildren of *Hyllus*, & Adnepotes of *Hercules*, were the first two Kings of *Lacedemon*, Anno mundi 2848. and out of their two Families called the *Eurypontidan*, and *Agidan*, the Kings of *Lacedemon* did jointly reign, until that about the year of the world 3777. *Eurydamadas* was the last of the *Eurypontidan* family, descended from *Procles*, and almost at the same time *Cleomines* the last of the *Agidan* family, descended from *Euristhenes*, was overcome by *Antigonus* King of *Macedon*. Yet could not this Government be properly called *Monarchy*, but *Duarchy*.

Nor less, childish is his mixture of *Aristocracy* and *Democracy*, for these will as little admit of mixture as any other. But see what a wise observation Author. he makes, *viz. The quarrel to be more ballanced, because the Government is divided in its self, and therefore dangerous.*

So then, the mixture of *Monarchy* with either or both the other Governments, makes no division; or to what purpose does our Author take notice of this dangerous mixture only in these two? and then our Author makes no doubt, *but if Aristocracy gets power enough, she is in posture of Supreme Authority.* Very wittily observed, and a very great doubt wisely resolved. Observ.

*Monarchy and Democracy can hardly be so mixed, that Democracy be perpetual, and Monarchy by spurts: for that is not Monarchy; the said Monarch being not long enough in Power to be accounted a settled Magistrate, as we see in the Decemvirs, Tribunes and Dictators among the Romans.* Author.

So then, here is *Monarchy* mixed with *Democracy*, and not mixed; and why not mixed? because forsooth it is by spurts, and not long enough to be accounted a settled Magistrate; no, how long then settles a Magistrate our Author no where saies; but if he had learned a very little Logick, he might have known that *majus & minus non variant speciem*, and a Magistrate of an hours settlement, is as much a Magistrate, as if he had been one never so long. And then see the wild instance of the Man, for although in the *Roman Dictators* there were some shadow of *Monarchy*, yet in the *Tribunes* being two, and the *Decemvirs* being ten, there could be no possible colour thereof, unless our Author by his Logick can make two Men and ten Men to be but one Man alone. But *stultum est solidas opiniones accuratius refellere*. I will refer my self to the censure of any Ingenuous and Judicious Reader, that has patience to read any one Ground in this whole book, if there be more sense or reason in it, then in this, and the foregoing Grounds of this Mans *Obedience and Government*. Observ.

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## The Thirteenth GROUND.

*Of the Qualities of Laws and Commands in respect to Obedience.*

**H**E that can find any good in this Ground of our Authors, let him take it for me, I will not hinder him.

## The Fourteenth GROUND.

*In what conditions the Subject may resist Government.*

Observ.

**W**E left our Author Ground 7, wondring at a *Jack-a-Lent* of his own making, and here we find him throwing stones at it to beat it down again; as who indeed may so well marre it as he that made it? But why does our Author say, the Subject *may resist*? for resistance is usually taken in an ill sence, as when the subordinate resists his superior? Why? if his absolute Governor has no power but what those Laws which the People (as he calls them) gave him, if he does transgress, the People might remand him to his Duty, and if he does not obey, he resists the People.

Author.

Then our Author saies, *It is evident, if it be rational to resist Government, it will be lawful also to break and remove it,*

Observ.

So that now all the fat is in the fire; all that our prudent Architector has been all this while a building, is blown away with this small wind: It may be a question hereafter where our Author shall next fetch his fire, now his *Ignis fatuus* is out. *Plut.* in the life of *Themistocles* recites, That *Themistocles* making himself merry with his Sons insolent usage of his Mother, and his Mothers like usage of his Father, was wont to say, his Son commanded all *Greece*: For the *Athenians* commanded the other *Grecians*; He commanded the *Athenians*; his Wife, him, and his Son commanded his Wife. How much greater power had our Author in this Government than *Themistocles* his Child had over the *Grecians*? For in all our Authors Government you shall find two degrees of Comparison above the superlative, *viz.* the peoples Power over their supreme and absolute Governor, and our Authors supreme supremest Power, who has a Power when he will, to make what he list the Peoples Laws, which shall oblige and tie up their absolute Governor; And when the toy takes him, they shall be the Governors Laws; And Ground 11. latter end, *No supreme Magistrate can be bound to any Laws, contrary to* (what our Author or Governor shall call) *good Government.* And now who would think so wise a fellow as our Author, who in this Government had such a monstrous and most unlimited sovereignty, should (by shewing his power in giving his

his Rational multitude liberty to dissolve it) lose it all in an instant? sure this *Icarus*, if he neither drowns, nor otherwise kills himself in the fall, will only rise up again to hang himself?

Well, but let us see whether upon our Authors principles this Government can be dissolved, or be in the power of his People or Rational multitude. All Men who have written of the Cause and Nature of things, have put a difference between Natural, and Voluntary or Rational causes or things. Natural causes or things are those which proceed immediately from God, and are above the Will or Reason of Man; Voluntary causes or things are those which do not immediately proceed from God, but from the Will and Reason of Man. But *ex Hypothesi* this Government, *Ground 7. page 48. is connatural*, and *Ground 8. page 50. Natural*; and therefore this Government is superior to the Wills or Reason of the People, and cannot be by them dissolved; but the resisting of it is a violence upon Nature, and not only Irrational, but Immoral and unjust.

Thus have we seen our Author make a Government, and thus have we seen our Author marre his Government. Let him tell us *Ground 15. wherein consists the Liberty of the Subject*: *Ground 16. Of the dispossession of a Supreme Governor and his Right*: And *Ground 17. Of a Governor dispossessed*: (only because our Author, *Ground 17. tells us that Pope Urban the eight was an Intelligent generous Prince, and well versed in publick Government, and he made a decision, that after five years quiet possession of an Estate, the Church was not bound to take notice whether the title were lawful or no*: I will tell our Author, that if Pope Urban might not take notice after five years, who is the lawful Governor, yet Pope Pius the fourth after above twice the time declared by Pope Urban, might take notice of it, as you may see *Hist. Con. Triden. 423. and 443.* So then Pope Pius may do that which Pope Urban is not bound to do) or say what he will for me, I am content if after all this pains on my part, I shall not (in the Judgment of wiser and more discerning Men than my Author or self) have made my self like our Author in thus far answering him to his *Grounds of Obedience and Government*.





## OBSERVATIONS

ON

Mr. HOBBS *De Cive*.

Observ.

Is first Axiome or Principle he begs, both in the Preface, and second Article of the first Book *De Cive*, is, That the beginning of Civil Society, is from Mutual Fear. Yet in his Preface, and second Annotation upon this Article, He fears that some men may deny it; yea, it is true, that very many men do deny it.

This therefore being required for a Principle, and the first Principle, and by consequence not to be proved, but to prove all that may be inferred from it; and since that he grants that very many do deny this Principle; Then by very many men must the whole body of *De Cive* be rejected: For, *Contra negantes principia non est disputandum*.

But if men will not grant this Principle, (in the *Pref.* and *Annot.* above-said) he will prove it so, that he will make them ashamed of it; and how, think you? (It will be somewhat odd, sure, to prove Principles.) He tells you, That all Cities, although they be at peace with their neighbors, yet keep Garrisons and Soldiers upon their Frontiers: And that when men go to sleep, they shut their doors; and that men taking a journey, do it with a sword; and that men treat usually, before they fight.

Observ.

All Science, all Learning, and all Reasoning whatsoever, by the authority of *Aristotle*, is begotten from pre-existing Principles which prove the Science and Learning; but by the judgment of *Aristotle* and all Philosophers, and men in their wits, no Science, Learning, or Reasoning, can prove the Principles. Besides, it is a contradiction, to say any thing is a Principle, which can be proved; for that which proves it, is prime and a principle to it. Would any man now think, that these Critiques and pre-  
tended

tended Masters of Reason had ever read one line in Logick, or *Aristotle*, who go about to prove Principles, by such silly things, as have scarce any verisimilitude in them?

Nor does he only make Fear to be the prime cause of all Humane Government and Civil Society, but also (*chap. 16. art. 1.*) he makes it the cause of all Religion, and Worship of God.

As if that men were not obliged to submit to higher Powers, *not only* *Observ.*  
*for wrath*, (take it in what sense you will, either fear of the wrath of the higher Powers, or mutual fear of the wrath of other men) *but also for conscience sake*: And that God were not in gratitude to be worshiped and served by ingenuous men, because he is good, and created them intellectual and reasonable creatures; but only by a servile fear of his Judgments, from whence only vile and vitious men seem to, but never truly serve or honor him. A pretty institution of Religion and Government for the Men of *Bedlam*, and Wives of *Billingsgate*.

He divides the whole Treatise into three titles, viz. *Liberty, Empire, and Religion*. Under the title of *Liberty*, he speaks of men as they are in a state of meer Nature, viz. of a state of men before they have by Pact given up their natural right to one Person, or one Court or Company of men; so that the will of this Man, or Court, shall be the will of all of them; and this he calls *cap. 5. art. 9. Civitas, or Persona civilis*.

If Mr. Hobbs had by a state of Nature understood such a state as *S. Paul* *Observ.*  
does, viz. of men who have only the Law of Nature, and not God's *Rom. 2. 14.*  
Divine Law supernaturally revealed in the Scriptures, to be their rule and guide; and that men in such a state not having the Law, may by Nature do the things contained in the Law, (for this Law is ingraven in the hearts of all men) he should have disputed without an Adversary for me. But when he makes all men *Jure naturali* (which is superior, and the cause of all Laws of Nature) to be equal, and in a parity of condition, and every man by his own natural right to have a power over every man, and to kill and destroy them, whensoever it seems good unto him, and yet without any sin; and that this State is only to be cured by the Laws of Nature of his own making, (although he would have them to be Divine Laws, and contrary to Natural rights) is such a monstrous Paradox and absurdity, as I wonder any Ingenuous man should assent to it.

Under the title of *Empire*, he is not less wild and extravagant in his concessions to the thing, be it *King* or *Court*, created by *Do* or *Dedi*, and not *Dabo* or *Faciam*: For he makes it not only Sovereign Judge of all Ecclesiastical, as well as Civil causes; but also impossible to command any thing contrary to the Law of Nature. Yet he makes the Law of Nature, the Law of God; and this Creature of creatures to be so infallible, that it is impossible to command any thing contrary to it.

It is not worth the examining, what he would have under the title of *Religion*; for men say, the man is of none himself, and complains (they say) he cannot walk the streets, but the Boys point at him, saying, *There goes HOBBS the Atheist!* It may be therefore the reason, why in all his Laws of Nature, he allows no place for the Worship and Service of GOD.

But it is time to examine the particular Articles, upon which this Body *De Cive* is built.



1. His marginal Note upon Art. 3. Cap. 1. is, *Homines naturâ aequales esse inter se.*

Observ.

There is no one Proposition in the world more false then this, nor more destructive to all faith, and truth of Sacred History. For whereas he says, that by nature Men are equal to one another; if the Scriptures be true, that God made Adam an Universal Monarch (as he says) as well over his Wife and Children, as other Creatures; and that since Adam, God did never create any Man, but the species of Mankind was continued by generation, and that (as he says) Primogeniture is preferred by the Law of Nature, (which Cap. 3. Art. 29. is immutable;) then it is impossible that since Adam any two Men in the world can be equal, where God does not make them so.

Cap. 10. art. 3.

Cap. 3. art. 18.

Cap. 4. art. 15.

Observ. 2.

Indeed, if Mr. Hobbs had been an Athenian, who filed the Men of Attica αὐτοχθόνες, Men of the same Land; or a Peripatetick, who held that Men, and the other things of the World, were from Eternity, as well as the World; or an Egyptian, who held that (from the example of divers creatures generated out of the river Nile) Men at first were generated from equivocal generation, or that Men had sprung out of the ground *fun-  
gorum more*; there might have been some small semblance for his opinion.

2. His Argument to prove the Natural equality of all Men, is, *Aequales sunt, qui aequalia contra se invicem possunt: At qui maxima possunt, nimirum occidere, aequalia possunt: Ergo, Homines natura aequales inter se.*

Observ.

Gen. 9. 6.

His minor Proposition is no where proved; and I am sure, contrary to what God says, *Whoso sheddeth mans blood, by man shall his blood be shed, for in the image of God made he man.*

Cap. 1. art. 10.

Observ.

3. Nature hath given to every Man a Right to all things.

What thing is mine *naturali jure* (as he says, or *lege naturali*) is mine, so that it is impossible it should be aliened, or made anothers by any act of my will, or the will of all the men in the world; For natural causes do not depend upon voluntary humane actions; and therefore the natural right which Nature has given to every man, remains still with every man.

Annot. art. 10.

Observ.

4. *Filium in statu naturali intelligi non posse.*

And therefore from Adam to our Saviour, could there be no such natural state; For S. Luke, cap. 3. gives a Genealogie of Adams sons, and sons sons, to our Saviour: And since, I do not think Mr. Hobbs can shew, that ever there was such a state in the world.

Art. 12.

5. The state of Man in Nature, is hostile. And cap. 8. art. 10. he says, *Men in the state of Nature may kill one another, so often as it seems good unto them.* And therefore he must invent and seek to make himself in a better condition then God hath made him, and that (forsooth) is, by seeking Peace, which he says, is the first Law of Nature.

Art. 15. cap. 1.

Obse. v.

Is it not strange, that a thing invented, and made by the wit and will of Man, and that contrary to the state and condition in which God hath made Man, should here prove to be a Law of Nature, which is the Law of God?

Observ. 2.

Ecclef. 7. 27.

And is not more strange, that God hath made Man upright, and he hath sought out many inventions; and yet Man should have need of Mr. Hobbs his help, to invent, and make him in a better state then God hath made him, or else he says, his conservation cannot be long expected?

Art. 15.

Neither

Neither is it possible in such a state where all men may kill one another, and where all things are alike and common to all men, that men should make any pacts or contracts one with another: For besides, that where men have nothing proper, there men cannot make pacts, or contract for any thing; also where there is no precedent humane Law obliging, there cannot any man be obliged or bound to any thing by his pact or contract; for to be bound, is in relation, and must presuppose something which does bind; but if nothing binds me but my Will, (which is a contradiction) I may unbind me when I will, for my Will is free. Observ. 3.

I deny that any man, or any company of men, can will any thing to be a Law to themselves: For, *Omnis potentia activa est, principium transmutandi aliud.* And therefore the act of no mans Will, can have a power or obligation upon himself; and by consequence cannot any man, or company of men, will, or make another who shall give them Laws; for, *Nemo potest transferre id in alium, quod ipse non habet.* Observ. 4.

6. *Legem naturalem esse dictamen rectæ Rationis.* Cap. 2. art. 1.

Would any man think that these Critiques and pretended Masters of Reason, did either understand Reason or Logick? If *Lex naturalis* be *dictamen rectæ Rationis*, I ask of Mr. Hobbs, what is the reason of it? If it be a prime cause or principle, then by the authority of *Aristotle Eth. lib. 6. cap. 3. & 6.* does it constitute the Ratiocination, and no reason can be given of it; for, *Mens sive Intellectus sit principiorum, Scientia verò cum ratione conjuncta.* *Dictamen* (therefore) *rectæ Rationis*, cannot amount higher, then rightly to infer or conclude from prime causes or principles; and by consequence cannot be the Law of Nature, or God, if Mr. Hobbs cannot give something prime or superior to it, from whence it may be inferred or deduced. And if the Laws of Nature, or God, be the dictates of right Reason, then are the Laws of God the Creator, subject and inferior to the faculty of a creature; which is not only absurd, but most monstrous and blasphemous. Observ.

7. But because to bind, and to be bound, cannot be in the same thing; he makes *obligans*, him who accepts the will of other men, and *obligatus*, him who does will, and so forsooth is become bound by his own will. Cap. 2. art. 4. & 13.

And had not this man more need to learn his Grammar better, (who makes *obligans* the patient, and *obligatus* the agent) then undertake to write Elements Philosophical *De Cive*? whereas the contrary is true in both; for *obligans* is he who doth will, and *obligatus* is he who accepts or receives the will of another. Observ.

8. *The action of two men, or more, mutually transferring their Rights, is called a Contract.* Cap. 2. art. 9.

There was never, I think, two more gross mistakes committed in so few words, For first he takes the fulfilling of a Contract, for the Contract it self: A Contract is the mutual stipulation of two or more, that they will do or give; and the mutual transferring of what is contracted for, fulfills and adnulls the Contract; and there have been, and will be infinite Contracts, where there is no transferring; nay, where there is a mutual transferring, there can be no Contract. Secondly, no Contract can be of Rights, but only of things in possession: The act of two or more mutually transferring, is the act of two or more giving, not contracting. Observ.

*In every Contract, either both (statim) perform that which is contracted for; or one performs, and the other is credited; or neither perform.* Ibidem.



Observ.

So that the Contract, and the Performance, are diverse things, which immediately before he confounds. Nor can his *statim* at all help him; for the Contract must precede, and the Performance be subsequent, it matters not how much, or little time; for, *Majus & minus non variant speciem*. Secondly, If one may perform, and the other be credited, or neither perform, then there may be Contracts, where there is no mutual transferring; which is absurd by his definition.

Where both soon after, *statim*, perform, there the Contract so soon as it is performed, is fulfilled or finished.

Observ.

Sure he takes great virtue to be in *statim*, which makes a Contract, and the annulling, and fulfilling of a Contract, to be the same thing.

Where one, or both are credited, there he, *cui creditur*, promiseth that he will afterwards perform, such promise is called a Pact.

Observ.

I do wonder therefore from whence his *una persona* or *una curia* can derive their supreme power, whenas nothing can pass from either, or neither part, by vertue of the civil pact. And no doubt this *Civitas* will be a noble structure, built upon such a foundation, wherein I think no man did ever pronounce so much, in so little, more rashly.

Cap. 2. art. 15.

9. We are freed from Pacts by two things, either when the Pact is performed, or forgiven.

Observ.

Therefore in the Civil pact, if any Right passes from the Subject to the Supreme power, then hath the Subject performed his pact, and so becomes freed from his subjection.

Cap. 2. art. 14.

10. No man by his Pact is obliged to an Impossibility.

Observ.

And therefore can no Supreme power be derived from the Pacts of men: For where there is not *Finis vite & necis*, there can be no Supreme power; and no man hath a power over his own life, and therefore no man can give it or transfer it to another.

Art. 18.

11. No man can be obliged by his Pact, not to resist him, who brings or intends damage to his body.

Observ.

And therefore no penal Laws can be executed; but Subjects are freed from their obedience, whensoever they have so far transgressed Laws, that they become liable to any corporal punishment; for where men may resist, there can be no subjection.

Cap. 18. art. 13.

12. Men must not resist where they cannot obey Princes, because it is against the Civil pact.

Also by this article, Men must suffer martyrdom, rather than resist; which is absurd by art. 18. cap. 2. for, martyrdom brings corporal punishment with it.

Cap. 2. art. 22.

13. An Oath adds nothing to the obligation of a Pact or Contract, (says Tho. Hobbs.)

Observ.

But if Perjury be a greater crime than single Falshood, then no doubt but a man is more obliged to perform a Pact or Contract to which he hath sworn, then he who hath not; and a man may see many men afraid to forswear themselves, who make no conscience of telling a lye. And if no man be obliged by an Oath, then is an Oath nothing but the taking of Gods name in vain; and it had been a vain thing in Abraham to have made his eldest servant swear by the Lord God of heaven, and the God of the earth, that he should not take a wife to his son of the daughters of Canaan.

Cap. 3. art. 1.

14. The second Law of Nature, is, Men must stand to their pacts.

Every

Every Man is obliged to his promise by the Law of Nature, and all Men are obliged to their pacts by the positive humane Laws of every place where they made them: And to suppose, that the Supreme power of any place, is made from the pacts of Men, and that Men are obliged to their pacts by the supreme Power of that place, is absurd, and *Idem per Idem*. Observ.

15. See how learnedly he proves from Scripture the abolishing of Mens common Right to all things, he cites *Gen. 13. 8. And Abraham said to Lot, let there be no strife I pray thee, between thee and me, and between my Herdsmen and thy Herdsmen: behold the whole Land is before thee, depart from me I pray thee.* Cap. 4. art. 4.

*Vers 7. is, And there was a strife between the Herdsmen of Abrams cattel, and the Herdsmen of Lots cattel.* So then before the abolishing of the common Right of all things, *Abram* and *Lot* had property in their Servants and Cattel, which is absurd and impossible, for nothing can be common and proper. Observ.

16. The succession was due to *Esau* by the Law of Nature, being the eldest son of *Isaac*, if he had not sold it, or his Father otherwise appointed. Cap. 4. art. 15. prope finem.

Yet he saies truly, *Cap. 3. Art. 29. the Laws of Nature are immutable;* and here he saies, *the Father may alter them, and the Son sell them.* Primogeniture being so sacred a thing, that *Esau* was said to be a despiser of his birthright, that he set it at a price to save his life, and being due by the Law of Nature, he could not transfer it to *Jacob* by any act of his; yet was it just with God, because he despised it, to transfer it to *Jacob*. Observ.

17. The submission to the will of one Man, or one Council, then becomes the will of them all, when every one of them obliges himself by pact to one another, not to resist the will of this Man, or this Council to which he hath submitted himself. Cap. 5. art. 7.

Here is nothing to pass, or to be transferred from one Man to another, and therefore here can be no pact; and here I would fain know, how to bind, and to be bound, can be the same thing, which *Mr. Hobbs* here makes. But every Man binds himself forsooth, and therefore every Man may when he will disoblige himself; for, *unumquodque dissolvi potest eo ligamine, quo ligatum est.* Observ.

18. The Right of punishing, is then to be understood to be given to any one, when every one doth covenant that he will afford no help to him who shall be punished. Cap. 6. art. 5.

What power of life or death is here any more, then if a company of Men contract one with another, that they will afford *Mr. Hobbs* no relief, if another Man will kill, maim, or punish *Mr. Hobbs*, that then this Man hath a power over *Mr. Hobbs* his life and person: and this Right forsooth he will call *gladium justitie*, *Art. 6.* Observ.

19. Having made the Temporal power to have its origination from the Inventions, Pacts, Wills, and policies of Men, he makes it Judge of all Doctrins and Opinions of Faith, and this from convenience, for saies he, *If one may command anything upon pain of Temporal death, and another forbids it upon penalty of eternal death, it will follow, not only innocent Citizens may be punished, but the City it self be dissolved, for no Man can serve two Masters.* Cap. 6. art. 11.

I would know how, this granted, could Christianity be preached, when the Temporal Laws every where did forbid it? Our Savior saies, Whoso hateth Observ.



St. Luke 14.  
26.  
St. Math. 10.  
28.

Littleton Hom.  
cap. 1.

Annot. art. 13.  
Cap. 6.

Observ.

Sodorenfis  
Episcopus.

Cap. 9 art. 13.

Cap. 5. art. 9.

Cap. 8. art. 5.

Cap. 9. art. 1.

Cap. 12. art. 6.

Observ.

hatheth not Father, and Mother, and Wife, and Children, and Brethren, and Sisters, yea, and his own life, he cannot be my Disciple. And if Temporal powers command any thing contrary to the Laws of God, we ought not to feare them that can kill the Body, but are not able to kill the Soul; but rather to feare him, who is able to destroy both Body and Soul in Hell. 'Tis true indeed, no Man can serve two Masters, who may with equall Right command the same thing; but a Man may serve two Masters who do not with equal Right command the same thing; as a Tenant who owes Homage to his Lord, is the Lords Man of life and limb, and of earthly worship, and ought to be true and faithful to him, ( saving the Faith he owes to his Sovereign Lord the King ) and so every servant ought to obey his Master in all things, which do not contradict Gods nor his Country-Laws; and so ought every Man to submit himself to Temporal powers in all things, if they be not repugnant to Gods Laws. And let any Man see whether the whole scope of this Article, be not to make all Faith, and Religion, as well as Society, a meer invention and policy of Man, and humane constitution, and Creature of a Creature; nor is the danger he makes, so much to be feared, for Ecclesiastical Powers have nothing to do with Secular jurisdictions.

20. There are some doctrines held, he saies, by which Citizens are impowered to deny Obedience to the Civitas, and to fight against Supreme Princes and Powers, and that by Right, yea it behoves them; and this belongs to the power which many do attribute to the Prince of the Church of Rome in aliena Civitate, and to the power also which Bishops elsewhere, out of the Church of Rome, ascribe to themselves.

I do not know, nor did ever hear that any Bishops out of the Church of Rome, did ever ascribe to themselves this Power. Nor are there any Bishops in the Western Churches of Christendom, out of England, Ireland, and the Isle of Man ( if those in Scotland were not, which is a question: ) and sure this Hierarchy never challenged any such Power. But why does this Man take such care for peace and quiet? when as by his own principles he justifies all the actions of the League in France against Henry the fourth; for Henry the third never gave nor sold the French Monarchy to Henry the fourth, nor did the Duke of Mayne and his party upon the death of Henry the third, oblige themselves by pacts one to another, that the will of Henry the fourth should be the will of them all.

21. It is most manifestly false, and contrary to the practice of the whole world ( where Men are not condemned to slavery ) that servants have no property against their Masters; for where servants are not slaves, they may both sue, or implead, and be sued, or impleaded; nay they may sue their Masters for Debt, or not performance of Covenants, &c.

22. Where he makes the Fathers power not to arise from Generation, but that Art. 7. Children are subject to their Father, no otherwise then Servants are subject to their Masters; is so wild and groundless an opinion, that it is not worth an answering.

23. It is, he saies, a seditious opinion, that Faith and Sanctity are not acquired by reason, and study, but alwaies supernaturally infused and inspired; and yet he saies, Cap. 18. Art. 4. prope finem, There is but one way to Science, i.e. by definitions: but this way to Faith does hurt.

How these two are consistible, I do not understand.

Fus

24. *Jus* is contrary to *Lex*.

Therefore by the 4. Axiom *lib.1. Euclid. Jus natura*, is contrary to

*Cap.14. art.2. prope finem. Observ.*

*Lex natura*.

By *Art.1. cap.4. Lex naturalis, est Lex divina*. And therefore by *Art. 2. cap. 14. Lex divina*, is contrary to *Jus divinum*; which is most abominable Blasphemy. Nay he says, \* *Jus divinum positivum*, is the Scripture; and here, *Lex divina positiva*; to be the Scripture. So that he makes contraries to signify the same thing.

\**Cap.8. ar.10. and oftentimes in his Preface.*

*Lex natura* cannot be contrary to *Jus divinum*, nor different, but only in this: *Jus divinum*, is an absolute right in God, to will or command any thing to be a Law of Nature; and *Lex natura*, is that which is so willed or commanded by God. I deny therefore that any Creature can have *Jus divinum*; but that all right which any Creature hath, is either from some Divine, or Humane law.

*Observ.*

*Jus natura*, is superior and must precede *Lex natura*.

By *Art.3. cap.1. Every man hath Jus natura*.

Therefore every man hath a right above the Law of Nature; and so Mr. Hobbs may save himself the trouble of his Philosophical Elements *De Cive*: For since he makes every man above the Law of Nature, sure he can never make him subject to any Humane Law.

25. *It is impossible for the Civil Law to command anything contrary to the Law of Nature.* *Cap.14. ar.10.*

Is it not a wonderful thing, that this man should make the *Civitas* to be a humane Artifice and invention, and the Law of Nature to be the immutable Law of God; and yet that it should be impossible that this Artifice (or created Deity) to command any thing contrary to this immutable Law of God? Sure the greatest Papalian never ascribed so much to the Pope in *Cathedra*. I will then tell him wherein the *Civitas* may command contrary to the Law of Nature, and wherein he is mistaken. The Laws of Nature are either upon supposition of Humane Laws, or not upon supposition of Humane Laws; as, *Thou shalt not steal*, supposes a Humane Law, which gives Property; but, *Honor thy Parents, Be grateful for benefits received, &c.* supposes no Humane Law: And therefore if the *Civitas* commands me to dishonor my Parents, or to be ingrateful for benefits received, (which *de facto* it may) this being but a Humane Law, I am notwithstanding obliged to honor my Parents, and be grateful for benefits received. But Mr. Hobbs supposing no Laws of Nature, but upon supposition of Humane Laws, is the reason (I conceive) why he says, *It is impossible for the Civitas to command anything contrary to the Law of Nature*.

*Observ.*

Wherein the *Civitas* may command contrary to the Law of Nature.

Yet will he have one exception, viz. *That the Civitas commands nothing to the contumely of God*. If a man should ask him, whether there be no Law of Nature, but the Honoring of God? If there be no other Law of Nature, then to what purpose are all his Laws of Nature, of standing to Pacts, of seeking Peace, &c.? Well, but if men by the Law of Nature are obliged to honor God, and it be impossible, as he says, for the *Civitas* to command any thing contrary to the Law of Nature, then is it impossible for the *Civitas* to command any thing to the contumely of God; and so he has made a needless exception. But it may be he does not think that men by the Law of Nature are bound to honor God; for he has not so much as mentioned it in his Laws of Nature.

*Ibidem.*

*Observ. 2.*

For



Mr. Hobbs.

*For then they are no Laws.*

Observ. 3.

Yes, the Statues of *Omri* were Statutes, although they commanded to the contumely of God; and so was *Nebuchadnezzors* command for the worshipping the Golden Image, a Law, though made to the contumely and dishonor of God.

Observ. 4.

Whereas he saies, *Quid sit Adulterium, does depend upon the Civitas*; I would know of him, whether it were Adultery in *David* in lying with *Bathsheba*, during *Uriahs* life: if it were, then is it not true, which Mr. Hobbs here saies; if it were not, then did God unjustly, so severely to punish him therefore

Cap. 7. art. 3.

*Tyranny is not a State of a City, different from rightful Monarchy.*

Observ.

True, upon your false and feigned Principles, where the wills and pacts of men are made the cause and origination of all Power in Government; where Mens wills are made their Laws, then which nothing can be more destructive to all Laws divine and humane; and the most Wilful man should be the most Just man: for to what purpose should there be any Laws Divine, or Humane, if a Mans own will be a rule and Law to himself: and by this Mans principles, it is only mens wills from which all Power in Government is derived, and to which Men ought to be subject.

Mr. Hobbs.

Yer, good Man, some difference he makes, viz. only in the exercise of their Power; he forsooth is a King that rules well, and he is a Tyrant that rules otherwise.

Observ.

As if *Absoloms* kissing the *Israelites*, when they came to demand Justice, and his desire to judge the people righteously, had made him a good Title to the Crown of *Israel*; or that *Feroboam*, or *Athaliah* had not been Usurpers, but very Rightful Princes, if they had ruled well. But though he makes no difference between Swordbearers and Swordtakers, between Gods Ministers, and Theeves and Robbers; yet the Holy Ghost does, for Gods Minister is a Swordbearer; and if he be not Gods Minister and a Swordbearer, but a Swordtaker, as our Saviour calls them who have not a just Authority, then whosoever sheddeth mans blood, by man shall his blood be shed, for in the image of God made he man. And if ever Man had a just cause to have taken the sword, then had St. Peter in defence of his Lord God and Master; but our Saviour reprehends him, telling him that whosoever takes the sword shall perish by the sword. And it is not wicked men whom Usurpers, Tyrants, and Swordtakers so much murder (for it is no better) as vertuous and honest: The worst of private Malefactors may justly with the Whore in *Terence* answer to the best of Swordtakers (if there be any degree of goodness in any of them) *quamvis ego digna sum hac contumelia maxime, indignus tamen tu qui feceris*. And whereas he only makes *Tyrannus ab exercitio*, it is false; for the abuse of a thing does not alter the nature of a thing, as a Man is a Man, although a bad Man, who abuses those good parts which God hath given him; so is a Father, and a Master, a Father and Master, (yet bad ones) where they abuse their Power; and so is a King, a King, although he abuses his Power; and the Holy Ghost many times calls them wicked, and idolatrous, Kings &c. but never Tyrants, as this Man does.

Cap. 1. art. 12.  
and Cap. 8.  
art. 10.

I would here gladly be satisfied of Mr. Hobbs, how (if God made Man in the state of pure nature, as he saies, in such a cut-throatly condition, and so much worse than any other creature, that men might jure naturali everlastingly kill one another, and commit no offence, if the King or Civitas does not

not restrain it) God could in justice have punished *Cain* for killing *Abel*, Cap. 6. art. 15. if *Cain* or *Abel* had not gone to *Do* or *Dedi*, and not to *Dabo* or *Faciam* with *Adam*, and made him their King, or *Civitas* over them, and *Adam* have given them a Law not to kill one another, (which I no where find, nor he proves, nor do I see any colour of reason to believe:) Nor had *Adam* any power to restrain his Sons, or give them Law, as Father; for if you believe him, he tells you, that *Dominium paternum non oritur ex generatione*, Cap. 9. art. 1.

I would further be satisfied, how this civil pact can give the *Civitas* that which none of them have, *viz.* Property, and power of life and death, without which can be no *Civitas* or Supreme Power; or any Power at all, if we be Christians, and believe God, who says, *By me Kings reign, and Princes decree justice, or judgment;* and that, *All powers are of God, and the powers that be are ordained of God.* If they be then Gods ordinances, and ordained of him, then can they not be an artifice and invention of any Man, but are, and ever have been, whether *Do* or *Dedi* ever had been or not. Pro. 8. 5. Rom. 13. 1.

And let any man judge whether he does not contradict himself. He says, *That the concord and consent of the Multitude, is not sufficient long to preserve Peace; but that it behoveth that something more be done, that they who have once consented to peace and mutual aid, for the common good, should not afterward, when any Private good varies from the Publique, again disagree, be restrained by Fear.* And *Art. 5.* he says, *Aristotle reckons among living creatures, which he calls Politick, not only Man, but also many other, as the Ant and Bee, who although they be destitute of reason, by which they can make covenants and submit themselves to Government; yet nevertheless by consenting, that is, by desiring the same things, and by avoiding the same things, they so direct their actions to one common end, that their Companies are obnoxious to no seditions: Yet are not their Companies therefore Civitates, nor are those Creatures to be called Politick, because their Government is only consent, or many wills to one object, not (as is necessary in a City) one will.* Cap. 5. art. 4.

Now mark, here he says, Consent only makes no *Civitas*; yet where he would prove the beginning of his Institutive or Politick Government from Scripture, he says, *Tale fuit initium regni Dei, &c. Such was the Kingdom of God over the Jews, instituted by Moles: If you will hear my voice, &c. ye shall be to me a Priestly Kingdom. And all the People together answered, We will do whatsoever the Lord hath spoken.* Observ. Cap. 11. art. 1.

So here let any man see this great Master of Learning and Reason, make the *Initium* of this Institutive or Politick *Civitas* to be derived from the Consent of the Multitude; and in the same breath, before the Multitude did consent, he makes God only by his servant *Moses* first to will, and after that the People to consent. You come behind, and I follow after, whither of us went before? Observ.

But suppose the beginning of this *Civitas* had its beginning from the Consent of the People, yet does he contradict himself as much as before; for then this *Initium*, is the *Initium, caput, corpus, & finis* of it, for here is nothing added to it. So that either here is no *Civitas*, and so Mr. Hobbs says not true, and has taken great pains to no purpose; or else this *Civitas* is wholly made from the Consent of the Multitude, which is absurd, and contrary to *Art. 4. & 5. Cap. 5.* Observ. 2.



Well, let us see whether he hath better success with *Art. 6.* then the *4.* and *5.* where he says, *Because the conspiracie of more Wills to the same end, is not sufficient for the preservation and stable defence of Peace,* (Doubtless it is not less then a Judgment upon him, that he should call such a consent as he here speaks of, a Conspiracie, which all men take in ill fence, of men consenting to do some evil act:) *it is requisite that the will of all be one, concerning those things which are necessary to peace and defence: But this cannot be, unless every man so subjects his will to the will of another; viz. of another Man, or Court, that whatsoever he wills concerning those things which are necessary to the common peace, be accounted the will of them all and every one of them.* And *Art. 7.* he says, *This submission to the will of one Man, or one Council, then is made the will of them all, when every one of them obligeth himself by pact to every one of the other, not to resist the will of that Man, or that Council, to which he has submitted himself.* And this a little after, he says, is called *Unio*; and this Union so made, *Art. 9.* is called *Civitas*, or *Societas civilis*, or *Persona civilis*.

Obseru.

1 Sam. 8. 5.

If this *Unio*, or *Civitas*, or *Societas*, or *Persona civilis* be so necessary to all Governments, and that it must (and therefore may) be made by mens pacts one with another; I wonder why the *Children of Israel* should be so zealous to have a King to judge them, like all the Nations, if they could by their pacts have made one, without ever asking one at Gods hands. Nor was there at that time, or ever before, any such thing as *ista Curia*, or Democracy ever heard of: For the *Children of Israel* desired a King to judge them like to all the Nations; and at that time was *Codrus* King of the *Athenians*, *Smendes* or *Semendes* King of the *Sicyonians*, *Aletes* King of the *Corinthians*, *Eurysthenes* King of the *Lacedemonians*. So that in those days, not among the *Grecians* was there ever so much as Aristocracy or Democracy heard of. Nor was there ever any place in the world, where there were men inhabiting, without Government; (For that place [*When there was no King in Israel*] we shall answer afterwards.) Nor was there originally ever any Government, but Monarchy; and that never from any Pacts of men: And this Government so continued everywhere, until it was violated by seditious and rebellious men.

And whereas he makes this Civil Pact to be so necessary, and antecedent to all Civil Government; I would fain know of Mr. Hobbs, whether *Saul*, *David*, *Solomon*, *Jehu*, *Hazael*, *Cyrus*, &c. were not as much Kings, or *Civitates* (as he calls them) as if they had all this Covenanting and making Pacts one with another, That this mans will should be the will of them all, Not to resist the will of *David*, *Solomon*, *Hazael*, &c. in those things which they deemed necessary for the peace of the *Israelites*, *Persians*, *Syrians*, &c. But if these were *Civitates*, (as if Mr. Hobbs be a Christian, which I think may be a question, he must needs confess) and yet not made so by his Civil pacts, nor indeed any other; Then is this *Unio* so far from being essential or necessary to the making of a King or *Civitas*, that as to the right of a King, it is no matter whether it be made or not: For men, if they do not submit, and consent to rightful Kings government, they disobey God.

Deut. 17. 15.

Nor did God rob the *Israelites*, *Syrians*, or *Persians*, or any other Nation, of any of their original right and power of making to themselves Kings, by giving them Kings. Nor were these Kings *Civitates Naturales*,

as

as he calls them, having overcome by force, and commanding lest they should kill. *Xenophon* in his Proeme to *Cyropædia*, says: "We know they did partly obey *Cyrus*, who were severed from him many days journey, they who were severed from him many moneths journey, and they who had never seen him; and lastly they who could not hope ever to see *Cyrus*, yet were content to obey him. And when he had reckoned up all the Countries subject to *Cyrus*, says, He enjoyed the Dominion of all those Kingdoms, whose language was neither the same with his, nor common with themselves: And yet there could be nothing less, then for fear of him, so great a part of the world should obey; that all stricken with fear, none should dare to disobey him." Cap. 5. art. 12.

And whereas he says, *That is to be understood the will of the Council, which is the will of the major part of those Men, of whom the Council consists:* It is an improper speech; for, the will of the major part, cannot be the will of the totality, but plurality; and if the will of the major part could be the will of the whole, then were a part equal to the whole, which is absurd, and impossible by *Not. 9. Encl. lib. 1.* Art. 7. Observ.

And though he takes such pains about his *Pacts*, and makes them so essential, and precedent to all *Civitates*, and that all Institutive *Civitas* is built upon; yet such is Truths excellency, that he overthrows it all, where he says, *Quare tu appellas eum Tyrannum, quem Deus Regem fecit?* 'Tis true indeed, if he be a King, only God can make him so: And if Civil power had been artificial in the cause, then must it necessarily be, that some time may be instanced where, and when this artifice was not: For all arts depending, and being made from mans understanding and reason, there must be a time before this art was found out; and if it were an art, it is not to be imagined that it should alwaies, in all times, be practised every where in the habitable world: And every man sees, that sometimes several arts are esteemed by some men, in one place, and neglected by others in the same place, and in other places not minded at all; and a famous Invention, or Art, is much cryed up in one Age, not minded, and neglected in another: whereas the mutual offices of Commanding, and Obeying, were always among men, in all places, ever since there were men in the world. 'Tis true therefore which *Aristotle* says, that *Nascitur dominus, & nascitur servus*; although he would have it contrary to reason and experience. And by consequence, the Kings of *Denmark*, *Poland*, and the *Romans*, are rather Kings by courtesie, (as they call the sons of Dukes, and the eldest sons of Marquesses and Earls, and the Judges when they are upon the Bench, Lords, though they be none) rather than Kings indeed. And so the Emperor, and Duke of *Venice*, are rather Supreme Powers in imagination, then truly so: which made our *Edward* the Third to refuse the Empire, and *Henry* the Fourth of *France* to scorn it. Cap. 12. art. 13. Pro. 8. 15. Isa. 3. 4. Lib. 1. Pol. Cap. 3. art. 13.

And if it be true which he says, as it is, *that God makes Kings*; then is it false where he says; *that a Monarch may at his will declare his Successor.* Cap. 7. art. 15. Observ.

Sure, this man would not have feared to have been of the Lady *Fane's* Conspiracie against *Queen Mary*, the Lady *Fane* being declared Successor to *Edward* the Sixth by his last will and Testament. Besides, if it be true, as it is, which *Sir Edward Coke* says, that *Solus Deus heredem facere potest, non homo*, and this to Estates that descend by Humane Laws; then sure no man can make an Heir to a Crown. Co. Lit. scilicet. 7.



But if Mr. Hobbs shall ask me, If power in Government were not originally from Pacts, how it came first into the world? I answer, That I am not bound to give an account of things how they came to pass, whereof there is no record: It is enough for me to affirm, That no time ever was wherein men did live together out of Society and Government. Besides, Society being natural, it is an absurd question; and a man may as well ask, why God made the world in that order and frame that he hath; or how he came to make Man a reasonable creature, and all other irrational, as why a sociable?

Well, but if he shall say, that Laws ought to be known; and if Kings reign by Gods law, then how can any man know that this man is King in this place, and that man King in another place? I answer, That I am content to shew this man by Gods law to be King here, and that man to be King there, when any man shall shew me by any Humane law, that any Individual man is heir to any Estate. And if there be that excellencie in truth, that a right Heir to the meanest Estate be rarely suppressed; then is this excellencie of truth more perspicuous, whenas I am confident that the right Heir to a Crown was never so suppressed, but he was ever believed to be so by them, who had never seen him, and most hated him. Besides, *Fus* is duplex, *Fus proprietatis*, & *possessionis*; *Fus ad rem*, and *Fus in re*. And therefore any Prince who is possessor of a Crown, has a Title good enough against any man else, but him who hath the *Fus proprietatis*, or *Fus ad rem*. And therefore ought no man, upon penalty of Damnation, to resist the Higher powers which are, that is, which are in possession, if it does not clearly and evidently appear, that this is only pretended power, and force indeed, to the dispossession and disinheretance of another, against whose right and title no just exception can be taken. Let this suffice here; we shall take occasion to discourse hereof more hereafter.

Rom. 13. 1.

I would fain know of Mr. Hobbs, Who gave the People this power of making Kings, or *Civitates*? or what are the People that have, or when was it, that they had it? At what age in pure nature, shall any man claim this right of giving up his Will, or be an Instrument of making this Civil Pact? or who shall define this time? Whether Women be not part of Mankind, and have not Wills as much or more then Men; and are not as liable to punishment for not observance, or transgressing humane Laws, as Men? Whether it be not reasonable, Posterity may not give up their Wills to another, since they have not the same Wills with their Ancestors? Whether the Ten Tribes did not rebel in giving up their Wills to make *Feroboam* King, though neither they or their ancestors ever made *Rehoboam*, *Solomon*, or *David* King, by giving up their Wills? Whether the King or *Civitas* claiming all right and power from the Multitude, and every one of the Multitude claiming all right and power from the King or *Civitas*, be not *Idem per idem*? And let any man judge whether there be any thing more unreasonable then this mans *Dictamen recte Rationis*.

OBSER-



## OBSERVATIONS

ON

HUGO GROTIUS

*De Jure Belli & Pacis.*

Et us see whether *Grotius* his Fabrick built upon this Popular foundation, be not as absurd and monstrous, as either our *Author's*, or *Mr. Hobbs's*; and adde him to these two, and see whether these Three be in Harmonical proportion.

But before we proceed, we will take some direction from the greatest Light of Nature, *Aristotle*; who says, *All men naturally desire to know; but there is but one way by which men can attain to knowledge, viz. That they proceed from things known, to find out things less known; and*

*from things manifest, to find out things more obscure. Which is evident: Naturaliter constituta est via ab iis quæ sunt nobis notiora & clariora, ad ea quæ sunt clariora & notiora naturâ. Non enim eadem sunt & nobis nota, & simpliciter: quare necesse est hoc modo progredi; nimirum, ex iis quæ naturâ quidem sunt obscuriora, nobis tamen sunt clariora, ad ea quæ sunt notiora & clariora naturâ. Ea verò sunt nobis primum perspicua & manifesta, quæ sunt magis confusa. Idcirco ab universalibus ad singularia progredi oportet: totum enim secundum sensum notius est; universale autem est totum quiddam.*

Well; *Grotius* says, In the beginning of Mankind, Community was another thing then what Dominion now is: For now Dominion signifies something proper, which thing (to wit) is so one mans, as it is not anothers in the same manner. We call that thing Common, whose propriety is collated amongst many by a certain consort or consent, excluding other men. *Linguarum paupertas coegit voces easdem in re non eadem usurpare: The poverty of Tongues hath forced men to use the same words in a thing not the same. The Community which then was, was nothing else but what was simply opposed to Property.*

*Phys. lib. i. tit. 2. 3.*  
*Mare Lib. c. 3. p. 34.*

But



But in his Preface to this Book *De Jure Belli & Pacis*, & para. 3. lib. 1. cap. 1. He shall not need to complain, that the poverty of Tongues compells him to use the same words, in a thing not the same. For he himself useth things not the same, (viz. *Communitas & Societas*) in the same word, viz. *Communitas*.

Observ.

Now, that Community and Society is not the same thing: There is not, nor ever was since the beginning of the world, any Family where men did not live in Society; but in no Family did men ever live in Community. Nor did ever men desire such a Community, as he here, and before in his *Mare Lib.* speaks of; Nor can Mankind subsist in such a Community; and so he himself confesses. And Man may be therefore not improperly said to be a reasonable creature, because he does not love and affect another because he is of the same kind with himself, (as other creatures who live in companies do) but chooses his society, as his Reason or conversation leads him.

Lib. 1. cap. 1.  
para. 3.  
Lib 2. cap. 2.  
para. 2.

But this Community (he says) which Man desires, is not of whatsoever Community, but of peaceable, and ordained for the manner of his understanding, with them who are of his own kind: which Community the Stoicks called *οἰκείωσις*.

Observ.

Does any Creature that lives in flocks and herds, not desire the community of its own kind? and therefore Hogs, Deer and Goats keep in herds, and Sheep in flocks. Or does any man think that Grotius could ever imagine, that his Countriment did desire Society or Community with other Nations for their Understanding, or Profit? If they desire this Society or Community for Profit, then are they out of Grotius his first Principle proper to Man; and for ought I can understand, as very Beasts, as any who desire to live in Community.

But Cynthius aurem vellit: For, says he, *Quod ergo dicitur natura, quodque animal ad suas tantum utilitates ferri, ita universe sumptum, concedi non debet.* What thing therefore is called Nature, and that every Creature is carried only to their profits, ought not to be granted so universally taken. For even some of other living Creatures, the study of their profit, partly in respect of their young ones, partly in respect of others of like kind with themselves, aliquatenus temperant.

Observ.

Is not here a Principle well defined! What so much as Equivocation can be taken against this, or the other Principle of Men, and Beasts? or indeed, what Man or Beast does understand any thing clearly from either of them? How does this man take *Aristoteles* one onely way to attain to knowledge, viz. from known and manifest things, to find out things less known and more obscure; whenas his very Principles are so obscure and equivocal, as either they are not to be understood, or may signifie one thing as well as another? Nay, let any man see if he makes not his Countriment generally verier Beasts then many other; for they have no respect of others of like kind with themselves, but only study their own profit: \*Which thing we believe, in them, does proceed from some outward understanding principle; *Ex principio aliquo intelligente extrinseco.*

\* Grotius.

Observ.

Has he not now well mended the matter, thus by a new term (I believe never before heard of, nor for ought I understand, to be understood) to explicate a thing obscure, by a term more obscure? But the matter in controversy is not, from what Principle Beasts desire Society; but, whether they desire Society; or not? When

When he is got loose from these Principles, he then saies, *But this* Grotius  
*keeping of society, which in a rude manner we have expressed convenient to hu-*  
*mane intellect, is, the fountain of that right or law ( ejus juris ) which is properly*  
*so called, by which abstinence from what is anothers, obligation to perform promi-*  
*ses, reparation for wrong done, &c. do appertain.*

But sure the Man does much forget himself; for in this Community Observ.  
 he here speaks of, there can be no *meum* or *tuum*, and therefore no *alienum*,  
 and by consequence no *alieni abstinencia*; nor can any Man perform any pro-  
 mise, who can have nothing wherewith to perform; nor make reparation  
 for wrong, when he can neither do any, nor has any thing to repair it  
 withall.

Then he tells us, *From this signification of Right or Law ( ab hac* Grotius.  
*juris significatione ) flowed another larger, which (he saies a little after) con-*  
*sists in discerning what delights or hurts us, and in judging how things should*  
*be wisely distributed.*

What is there in this, which is proper to Man? does not every other Observ.  
 Creature by an instinct in nature (which God has given instead of reason )  
 discern much better then any Man does, what thing delights, and hurts  
 them? and all oviparal creatures more wisely distribute to their young ones,  
 then the wisest Man can to his Children.

He defines *jus naturale*, to be *Dictatum recta rationis indicans actui* Lib. I. cap. I.  
*alicui, ex ejus convenientia, aut disconvenientia, cum ipsa natura rationali,* Para. 10.  
*in esse moralem turpitudinem aut necessitatem moralem, ac consequenter ab*  
*auctore natura Deo talem actum aut vetari aut praeipi.* The Law of nature  
 is the dictate of right reason, shewing to any action, from its convenience  
 or disconvenience with Rational nature, that there is in it a Moral turpi-  
 tude or a Moral necessity, and consequently such an act is commanded or  
 forbidden by God the Author of Nature.

Would not any man after all this adoe, expect that *Grotius* had defined Observ.  
 something? But if *definitio be exclusio equivoci*, then is that no definition  
 which may signifie one thing as well as another; and if humane actions  
 convenient or disconvenient with Rational nature, may be prudent and  
 profitable, as well as Just and Moral, then is there not in every action con-  
 venient and disconvenient with the Rational nature, a Moral turpitude or  
 necessity; and so every such action is not the Law of Nature, and so  
 neither commanded nor forbidden by God. But I forgive *Grotius* in this,  
 not having defined any thing less equivocally: as also his every where  
 confounding *jus* with *lex*, in regard the *Romans*, *Civilians*, and generally  
 Lawyers do so; yet thus much I do affirm, that if *jus* and *lex* according to  
*Calepine*, do differ as *Genus* and *Species*, or at least as the cause and effect;  
 ( for it is impossible there should be *lex lata* where there was not *jus legisla-*  
*tivum* superior, and the cause of the Law ) then he which writes of these  
 things must distinguish and define them, or he shall never write clearly, or  
 be clearly understood in any thing which he writes of them.

But though he makes *jus naturale* to be *dictatum recta rationis, viz. a* Lib. I. cap. I.  
 liberty or abstinence to every Man, to do or not do whatsoever is reasonable Parag. 10.  
 to him, and that this *jus* is the Law of God and unalterable by God himself;  
 yet without giving any reason for it, he saies, *Sciendum est praeterea &c.* It  
 is to be further known, that natural Right or Law does not only act concerning those  
 things which are above a Mans will, but concerning many things which follow a  
 Mans



mans will. So, Dominion which is now brought in use, mans will brought in: But being brought in, it is wickedness in me to take against thy will, that which Natural law or right (*Jus naturale*) shews to be of thy dominion.

Observ.

So that his Principles before were either equivocal, or obscure; And here is one, which signifies contradictory, and impossible things.

These things therefore granted, and being the easie, and known Principles upon which *Grotius* laies his foundation, and so plain and perspicuous, as no exception, nay not so much as equivocation can be taken against them, any of them, or any part of them; Sure he shall not need much to use the help of Geometry, to build a most exact and noble Structure, which shall not only be a Land-mark, but also a Sea-mark for all Kings and Commonwealths, now and hereafter to govern and steer their actions by, *tam per mare, quam per terram*, as well by Land as Sea; but also a secure Rule for Subjects to continue their obedience, until they pretend a necessity for rebellion; if otherwise they cannot find some relief out of such popular Orators as *Cicero*, *Demosthenes*, *Cleon*, &c. which *Grotius* shall esteem of like weight with any testimony of Scripture.

It is a most pleasant thing to see the excellencie of Truth in her pure and simple nakedness, how plain, easie, and beautiful she appears: whereas Falshood, with all the art, learning and industry of man, is still rendred more perplext, confused and dark, by how much is added to it.

And therefore to what a volume here has *Grotius* increased his *Jus Naturale*! Sometime it is *Jus divinum voluntarium*, *jus divinum*, *jus humanum*, *jus humanum voluntarium*, *jus gentium*, *jus civile*, *jus latius patens*, *jus arctius patens*, *jus constitutum*, *jus immutabile*, *jus commune*, *jus gladii*, *jus divinum perfectius*, *jus belli solenne*, *jus belli minus solenne*, *jus precarium*, *jus revocabile*, *jus usufructuarium*, *jus temporarium*, *jus armorum movendorum magistratuum minorum*, *jus natura pro certo statu*, *jus rectorium*, *jus aquatorium*, *jus superveniens regis*, *jus externum*, *jus internum*, *jus exterorum supervenienti dominio*, *jus pignoris*, *jus retentionis*, *jus servitutis*, *jus luendi pignoris*, *jus transcendendi*, *jus morandi*, *jus habitandi*, *jus habendi loca deserta*, *jus reductive*, *jus restrictive*, *jus gentium improprie*, *jus derelictum*, *jus quasi*, *jus feciale*, *jus externum efficax*, *jus reale*, *jus inventionis*, *jus primi occupantis*, *jus proprietatis*, *jus possessionis*, *jus domini*, *jus herile*, *jus paternum*, &c. Whereas if he had made use of that plain and short Sentence, which the greatest Glory of all the Heathen Roman Emperors professed he learned of the Christians, *Quod tibi fieri non vis, ne feceris alteri*; it would have signified infinitely more, then is contained in all the confused obscurity which he imposes upon the world in this Book *De Jure Belli & Pacis*, founded upon this false and feigned Principle of the Original right and power of the People, from whence he derives all power in Government. For, art thou a Subject? thou wouldest not willingly any man should forceably or fraudulently take any thing, which the Law has given thee, from thee; Do not thou so by another. Is he a King? he would not have his Subjects wronged by another; Let not him wrong another Kings Subjects. If one Subject does another wrong, the Law is open; he who is wronged may have relief by Action or Complaint, not by Arms. If one King does wrong to another, he who is wronged has God and his sword to defend himself, and do justice upon his Adversary. And whether the doing, or not doing such a thing be wrong or injury, is every King, and not *Grotius* Judge, and God the Judge of every King.

Alex. Severus.

It

It is true, that in all Faculties whatsoever, and in all Arts and Sciences, men must use Terms to express what they conceive by any general Notion and Thesis, (*Et ab universalibus ad particularia ratiocinando, oritur scientia*) and must alter their Terms as they proceed from one thing to another, and add to them in the specifications of them; (for, *omnis additio probat minoritatem*.) But no man (who desires to be understood, or who desires to understand himself) will undertake such a task as *Grotius* here does, to compile a Volume upon such contradictory, equivocal, and obscure Principles: For, *Conclusio sequitur deteriore partem*. And if any part of a Proposition be but probable, though the Sillogism be made in the clearest Mood, yet the Conclusion is no more.

And any man may much better thus reason, then *Grotius* does: — A right-lined Figure, is that which is comprehended under right lines; and that which is comprehended under three right lines, is a right-lined Triangle. *Sciendum praterea, &c.* It is to be further understood, Right-lined Figures are not only such as are contained under right lines, but may serve for many other things besides. So, Spherical Figures, as they are now used by Astronomers, the invention of man has found out; but being found out, these right-lined Figures may serve for them also; (for, Spherical and right-lined Figures have many things common to them both; as when they are cut transverse, they are cut to right angles; and in Spherical and right-lined Triangles, two sides is more then the third, howsoever taken; and in both, the sides have the same proportion one to another, that their opposite angles have; nor are they in any thing contrary one to another.) Yet if any man shall take a Spherical and right-lined Triangle for the same thing, (as *Grotius* does *Jus Naturale*, which he makes to signifie Community and Property, in the same Principle, which are contrary one to another) I make no doubt but he might compile as big a Volume, and almost as little to be understood, as this *De jure Belli & Pacis*.

Well, but let us see why *Jus Naturale* is immutable by God himself. (Note, *Grotius* every where almost confounds *Jus* with *Lex*; and here he takes *Jus Naturale*, for *Lex Naturæ*.) For, *Although* (says he) *the power of God is immense, yet some things may be said to be, to which it does not extend it self; because those things so said, are only said, and have no sense which may express the thing, but are repugnant to themselves: So that twice Two should not make Four, cannot be effected by God.*

It is true, that God cannot make contradictory things, and things repugnant to agree, and to be the same. But this is nothing to *Grotius* his purpose, for a Similitude proves nothing; nor is there any analogie between the things propounded by *Grotius*: For though things simply necessary be immutable by God, yet the Law of Nature is the Law of God; and therefore being a creature of God's, it cannot have any obligation upon God; but being the Law of God given to Mankind, it is immutable by them; and God might, if it had pleased him, have given something else for the Law of Nature to Mankind. Both *Grotius* his Positions therefore in this Section are manifestly false, absurd, and blasphemous, viz. *That the Law of Nature is immutable by God himself; And, That Usus communis is Jure naturali, and yet mutable by the will of Man.*

And if I be demanded to shew an example, that God is not obliged to the Law of Nature, or that the Law of Nature is not immutable by God:

Observe.

If *Lex lata* had any obligation upon the Legislator, then were the Creator obliged and subject to the creature; than which there is nothing more blasphemous.



I say, *Jus suum cuique tribuere*, is from the Law of Nature; yet did the Children of Israel borrow Jewels of gold, of silver, and raiment of the Egyptians, and all such things as they required of them, and spoiled them by not making restitution, without any violence upon the Law of Nature, because God commanded them; nay, they had sinned and disobeyed God, if they had not done it. And so by the Law of Nature, every Father is obliged to preserve and nourish his children; yet because when God commanded *Abraham* to offer up and kill his son *Isaac*, *Abraham* was obedient to God and would have done it, God takes it for the highest act of *Abraham's* faith, and swears by himself, *That in blessing he would bless him, and in multiplying he would multiply his seed as the stars of heaven, &c.* Yet can no man borrow, with a resolution of not-restitution; nor any Father put his Son without cause to death, where God does not command, though all the world should command it, without a violence upon the Law of Nature. Nay I say, the Laws of Nature being eternal, there was never any time when men ought not to give every man his due; and so by consequence, no time when *Grotius* his *Ufus communis* was, since Men were born; but ever since Men were in the world, Dominion and Property have been. *Cain* had his Fruit of the Tillage of the ground, and *Abel* had his Flock and the Firstlings of his Flock; neither of which could be, if *Grotius* his *Ufus communis* had been.

Object. But you may say, Property presupposes humane Laws, which must give it; and humane Laws must happen in succession of time: And that therefore before these humane Laws were, there could be no Property, and by consequence, all things were common and undivided.

Sol. For the satisfying of this doubt, we must consider that God, in the Creation, only created one Man, and out of him made Woman; and that ever since no Man was ever made, but the species of Mankind hath been continued by generation. I grant that all things were common to *Adam* (except the forbidden fruit;) but no Man that was ever born into the world (and not a Posthumous King) who was not born in subjection to humane Laws. Nor did ever *Adam* derive this Legislative right which he had over his Wife and Children, by any Pact, Contract, or Submission of his Wife and Children; but had it from God, because he was first made. It is therefore manifestly false, which these men beg, *That by Nature all Men are equal, and that the will of Man brought in Dominion.* Nor do these men shew out of any sacred or prophane History, that ever Dominion was brought in by Man, or that Men had things common and undivided among them.

Lib. 1. cap. 1.  
para. 10.

Well, but *Grotius* (having in this Paragraph, in a tedious insignificant thing, defined the Law of Nature so, as it may signifie any thing, and made it the Law of God; and that thing, which hath quite routed this Law of God out of the world, and set up another thing in stead of it, to be the Law of Nature; and made the Law of Nature to be immutable by God himself, and yet to continue but for a certain season) thinks he hath not so perspicuously done this, but that a certain Image of mutation may deceive them who take not heed; whereas the Law of Nature, which is immutable, is not changed, but the thing of which the Law of Nature does work, receives some mutation. For example: If a Creditor to whom I am obliged, takes what I owe him; now I am not bound to pay, not because the Law of nature leaves to command

to pay what I owe; but because what I did owe, ceases to be. And to prove this, he brings Greek in *Epictetus*.

It is true, that universal causes in nature produce nothing, but as meeting with particular material causes; the law of nature therefore of it self produces nothing, but as meeting with particular material causes apted and disposed for the law of nature to work upon; and therefore when these particular causes cease, the obligation which the law of nature creates, ceases also. *Observ.*  
As, *Thou shalt honor thy Father and Mother*, is the law of nature; but then there must be Parents & Children, or the law of nature creates no obligation; and therefore when the particular cause ceases, the obligation of the law of nature ceases also; as when Parents are dead, the law of nature in that particular can have no obligation upon their Children. And so in the instance which *Grotius* gives, a Debtor is by the law of nature obliged to pay his Creditor: but this Debt being paid, the particular cause ceasing, the obligation of the law of nature ceases also. What need therefore was there of *Arrianus* his Greek out of *Epictetus*, to prove a prime and necessary truth, which is of more authority then forty *Arrianuses*, and all the Greek in *Epictetus*, *Grotius*, and all his Authors and Poets to boot?

*Grotius* goes on: So if God commands any man to be killed, or to take away any thing that is anothers; It is not lawful that Murder or Theft be done, which terms involve vice; but it is not Murder or Theft which is done by God, the Author of life and all things.

They say, *Nulla similitudo quatuor pedibus currit*. I am sure this similitude runs not upon one foot, for in this last the particular cause remains, whereas in the former it is taken away; and if the law of nature be immutable by God, and *Thou shalt not kill or steal*, be from the law of nature, then it is Murder and Theft, although commanded by God. Thus hath *Grotius* instead of clearly propounding his principles and orderly reasoning from them, thatched a company of equivocal and contradictory principles, with Poets and Authors brought in by head and heels; so as not any one proposition is clearly stated and disputed, but the whole Treatise a most perplexed and insignificant thing. *Observ. 2.*

God conferred upon Mankind generally, Jus (Right) immediately after the Creation; and again when the world was repaired after the flood, over all the things of this inferior nature. There were, as *Justin* saies, all things common and undivided to all Men, even as one Patrimony should be to all Men. God was pleased peculiarly to give rights (dare jura) to one only people, viz. the Hebrews. *Lib. 2. cap. 2. Para. 2. Lib. 43. Lib. 1. Para. 16. de jure Belli, &c.*

Which is absurd and impossible by the ninth Notion of the first Book of *Euclid*, viz. a part equal to the whole; the Hebrews not being all mankind, but a part. *Observ.*

*Grotius* goes on, Hence it came to pass that every man gathered whatsoever he could snatch to their own uses, and consume what could be consumed; and whatsoever any man had so snatched, that could no man take from him, but by injury: but this State could not long continue. *Lib. 2. cap. 2. Para. 2.*

How's this? This is more monstrous and absurd then the other: what, God gave a Right to Mankind, and that so immutable, that it is unalterable by God himself, and yet not possible long to continue! *Observ.*

To prove this first Common Right of all things common and undivided to Mankind, he refers to *Gen. i. 29. 30.* And God said, I have given



ὅμιν ( the Septuagint has it to you in the plural number, when Adam only was created ) every herb bearing seed, which is upon the face of the earth, and every tree in the which is the fruit of a tree yeelding seed, to you it shall be for meat, &c. Now how could God speak to Adam in the plural number, when Adam only was created ? It is said verse 27. So God created Adam in his own Image, in the Image of God made he Man, Male and Female created he them : And therefore God speaks here to Adam and Eve. Now whether God gave this Right to Adam and Eve in Community to both alike, as Grotius would have it, or to Eve in subordination to Adam, I refer it to any Christian Man to judge. Let the Woman learn in silence with all subjection, &c. and the reason the Apostle giveth is, Man was first made, then Eve. But suppose that God gave this Right not only to Adam and Eve, but to all Mankind in Adam and Eve ; yet by the authority of the Holy Ghost had Adam dominion over all Mankind, because Adam was first made, and therefore God at the Creation of Man made Government with Mankind.

1 Tim. 2. 11.  
verse 13.

Let us see whether Grotius has any better luck with his common and undivided Right of all things, &c. immediately from the time of the world repaired after the flood ; which to prove, he refers to Gen. 9. 2. 3. And the feare (ὀμῶν) of you, and the dread of you shall be upon every beast, &c. every moving thing that liveth shall be meat for you, even as the green herb have I given you all things.

Observ.

Annot. art. 10.  
cap. 1.

Verse 20.

Now then, if this were not given to Noah his Wife, and Noahs Children in subordination to Noah, but as Grotius would have it, in community, to all alike ; then had Sem as much Right to all things as Noah, Ham as Sem, Japheth as Ham, Sems wife was an intercommoner with Noah, Ham with Japheths wife, and Noahs wife with them all, ( if this be true, Mr. Hobbs makes Noahs Sons in an ill case, where he saies, *filium in statu naturali intelligi non posse*, no Son can be understood in the state of nature, and Sem, Ham, and Japheth are Bastards, and not Noahs Sons. ) Well, if Noah and his Wife, his Son and their Wives had all things in common, that is, every one of them get what they could snatch to their own uses, and consume what might be consumed ; from whence did Noah snatch his Vineyard, and drank the wine thereof untill he was drunken ? If you beleeve Grotius, it was Sems Vineyard as much as Noahs ; Japheths Wives as much as Sems, and Hams Wife had as much right to it as any body else. Poor Noah, thou hast taken great pains here to little purpose, if Hugo be thy Judge.

Cap. 1. art. 7.

Art. 10.

Lib. 2. cap. 2.  
Para. 2.

Well, Mr. Hobbs, rather then he will run upon Scylla, shall split himself against Charybdis : and he makes *jus* to be the same thing with *libertas*, and the foundation of *juris naturalis* to be, that every Man as much as he can, may defend his life and members. And, *Natura dedit unicuique jus in omnia*. Grotius saies, *Erant omnia communia & indivisa omnibus, veluti unum cunctis patrimonium*. Which is all one and the same thing, differently expressed.

Cap. 1. art. 10.  
Lib. 2. cap. 2.  
Para. 2.

Thus far these Wits jump ; we shall see them far enough asunder by and by. But Mr. Hobbs, no where tells us, when this *Jus Naturale* was in the world ; ( sure it was when Apes could speak, and Owls sing. ) They both agree too, that this was a time when there was no Government, or subordination of Men ( nor Women, for ought I can find ) under one another ; before Men had made Government, by giving up their will to any Man, or Court. Mr. Hobbs calls this time, *Status merè naturalis* : Grotius, *Status qui durare non potuit*. A little before he saies, *Quod quisque arripuerat, id ei eripere*

*eripere alter nisi per injuriam non poterat.* Mr. Hobbs says, It was not at all profitable to Men, that they had such a common Right in all things; for the effect of that Right is almost the same, as if there had been no Right at all: For although a Man might say of every thing, This is mine; yet he could not enjoy it because of his Neighbour, who with equal right, and force (here the Wits begin to disagree) might pretend the same thing to be his. Nay, Mr. Hobbs goes further, and is so far from supposing it an injury to take any thing from any Man, in the state of pure Nature, that he makes this state hostile, and that Men may kill one another, and yet do them no injury. And the reason he gives for it, is, That injury is done only to him, with whom we have made a Contract; otherwise it is only damage any Man can do to another. Cap. 1. art. 10.  
Art. 2.  
Art. 3.  
Cap. 3. art. 4.

Here we see these Wits plainly to differ; next bout we shall see them removed as far as Gades is from Ganges. Observ.

Grotius defines *Jus naturale*, to be *Dictatum recte rationis, & à Deo ipso immutabile*. Mr. Hobbs defines *Legem naturalem, non esse consensum hominum, sed dictamen recte rationis*. And, *Leges naturæ sunt immutabiles*; The Laws of Nature are immutable, and the same with the Moral Law. (Here Men begin to speak, and the Apes to hold their peace.) But Mr. Hobbs makes *Jus* not only different, but also contrary to *Lex*: And therefore Mr. Hobbs his *Lex natura*, is contrary to Grotius his *Jus natura*; and both immutable. And now would I fain see some wiser man then either of these, reconcile these two Wits. (a) Li. I. cap. I. para. 10.  
(b) Cap. 2. art. 1.  
(c) Cap. 3. art. 3.  
(d) Art. 31.  
(e) Cap. 14. art. 3.  
Observ.

It is a miserable condition Grotius makes all Governors to be in, that they cannot make any Law which gives Property to any of the governed, (nor indeed, for ought I can see, can there be any Government by this mans grounds, for he confounds the relations) but that this Law must be against that Right, which God conferred upon Mankind generally after the Creation and Flood, and is so unalterable, that it cannot be changed, no not by God himself.

Let us see whether our Author can reconcile these two; (but for my part I much fear him, because I do not take him to be so great a Master of Reason, nor so Book-learned as either of the other two.) He in Ground 6, makes *Jus* or *Fustum*, Right or Due, to be when a man puts himself and his Promissary into a rank of agencie and patience, upon a new score. And supposeth in the next Ground, a Company of Men without Government, whom (forsooth) he calls a Rational Multitude; but most absurdly (not considering where there is no Government, there can be no Law; and where there is no Law, there can be no Property, no *meum* or *tuum*) he makes the Individuals of this Rational Multitude to abound with many goods, and to want others; the love of which, and the fear of losing them, are his chief reasons why Government is necessary.

But it may be, the reason why these men agree no better here, is, because they are in the dark, where there is no Government. Well, we will see how they agree when they have the light of Government: And first, Whether may the Subject resist Authority, or Government? We will begin with our Author, because we left before with him. Our Author tells us, In what cases it is rational not only to resist, but also to depose Government. What those cases are, I cannot tell; He that has nothing to do, may look and see. But his last Grounds are; Neither Lawyers, nor Divines, are Judges in those cases. So then it seems, only the Devil, our Author, and they who be less book-learned than himself, are. Ground 14.  
Observ.  
He



Ground 15.  
Ground 8.  
Ground 11, 12.

He tells us, wherein the Liberty of the Subject consists. He ties up his Supreme Trustee to such Laws as the People entrust him withall; and yet gives him leave to do whatsoever he thinks good.

Observ.

The Governor and Governed are here in a very sweet and secure harmony; but no doubt our Author will judge both the one and the other very righteously and uprightly.

Lib. I. cap. 4.  
Para. 1.

Grotius, *de bello subditorum in superiores*, states the question: In the five next Paragraphs seems to be in the Negative; but in the seventh Paragraph he makes it a weighty question, *Where there is Supreme Necessity?* For, Certain laws of God, says he, although they be generally pronounced, have a tacite exception of highest necessity: Which thing was defined concerning the law of the Sabbath, by the Wise men, in the times of the Hasamoneans; from whence came that proverb, *Periculum animæ impellit Sabbatum*: which may be understood, The danger of the soul necessitateth a Sabbath; or, the danger of the soul destroys the Sabbath.

Observ.

Grotius here is for the destruction, or he is like to have small relief from this proverb.

Grotius.

And Judas, as Synesius says, gives this reason of his neglect of the Sabbath: *σάπας ὑπὲρ ψυχῆς Ἰουδαίου*, We were brought into most certain danger of our lives. Which exception is proved by Christ himself; as also in the other law, of not eating the Shewbread.

Observ.

And yet all this, in this case, will afford Grotius but small relief. For, sins are twofold, either as they are omitted, or committed. Gods commands are omitted, or transgressed, either as they refer to God individually; or where they are omitted, or transgressed, to the wrong or injury of another. As here in the observation of the Sabbath, the omitting of which duty, was a sin only against God, for no man had any wrong done to him thereby: But, *Thou shalt not commit adultery, Thou shalt not kill, &c.* which if a man does, he not only sins against God, but does wrong to another. Admit, in case of necessity, God (who hath made all things for man, and man only for himself) hath dispenced with many sins which related only to him, for mans preservation; (yet by Grotius his good leave, we must not go too far; for I do not see then, how the primitive Christians should have suffered martyrdom, and not have symbolized, or resisted the Gentiles;) yet it does not therefore follow, that any man may pretend any necessity, (nor can any one shew that ever God did dispense withall) to transgress Gods command, and to do that wrong and injury to others, which is impossible for him to repair; as in Subjects making war against their Superiors; for what recompence can be given for the blood and destruction which they bring upon them who obey their Superior? And I hope neither Grotius, nor any man else, will deny it is lawful to obey Superiors.

Grotius.  
S. Matt. 10. 19.  
S. Luc. 13. 33.

Yet from the authority of S. Peter, 1 ep. 3. 21. *& qui animam ita perdit, is vere eam acquivisse à Christo pronunciatur*, and the example of the primitive Christians, he seems to be in the negative.

Observ.

But why in reason should he make Gods command to be in subornation to a humane constitution, and that not founded upon any command of his neither? I cannot tell. Well, see what he says for it: Here he has his *Notandum* *primò homines non Dei praecepto, sed sponte adductos experimento infirmitatis familiarum segregum adversus violentiam, in societatem civilem coisse unde ortum habet potestas civilis, quam ideo humanam ordinationem Petrus*

Grotius.

1 Pet. 2. 13.

*vocat,*

vocat, quamque alibi & divina ordinatio, quia hominum salubre institutum 1 Pet. 2. 13. Deus probavit.

It there was never, nor can be a Family, where men be in a parity of <sup>Observ.</sup> condition, and that, as Grotius here says, Civil power was made from Families; then were not men in a parity and like condition, before they brought in the Dominion which is now in use: And therefore all his whole Treatise founded hereon, not only false, but repugnant and contrary to himself. And how is his *Notandum* that *Legal power is not made by Gods precept, but from the People*, proved by S. Peter? It is true, S. Peter calls it an ordinance of Man; but if this be not Gods ordinance of Man, it is inconsistent with Rom. 13. 1. and with what he himself says immediately after, viz. for the Lords sake. It is therefore the Lords ordinance of Man, and so quite contrary to Grotius his *Notandum*. Where to look for the Divine ordinance, because God has called it a wholsom Institution of Man, I cannot tell, nor care much.

Then Grotius, in seven Cases together, gives leave to make war: But *ex hypothesi*, how it can be of Subjects making war against their Superiors, I do not understand; unless it be in the fourth, where he says, *A King loses his Kingdom, if he be carried with a hostile mind to the destruction of all the People*. For in none of the other there can be any subjection. But how any man should be so mad, as being a King, he should make himself worse then any private man, by destroying his Subjects, I do not understand; and therefore Grotius might very well have left his 4. or 11. *Parag.* alone. The rest of this Chapter is, *Wherein an Invader may be resisted*. He speaks nothing against Usurpation, for fear he calls his Countymen in question. So Grotius seems to leave it indifferent, whether there be a necessity of Subjects obedience. God expressly, and the practice of the Primitive times were for it: Certain Laws of God, although generally pronounced, have a tacite exception of highest necessity, seems to be against it.

But Mr. Hobbs outruns the Constable, and makes the King or Civitas (a) Cap. 6. not only impunable for whatsoever he shall do; and indissoluble by that power art. 12. that made him; (b) Art. 20. And that the King or Supreme power is not bound by its own (c) Art. 14. Laws; And (d) that no man has any thing proper against it: But also (e) this Civitas, or Supreme power, has power to examine what doctrine shall be taught, (d) Art. 15. against which none ought to say any thing contrary: For, says he, if any (e) Art. 11. one may command one thing upon pain of natural death, another forbid it upon the penalty of eternal death, and both by right; it will follow, not only Citizens, although innocent, may be justly punished, but the City dissolved; for, No man can serve two Masters.

True, not actively, where they command contradictories. Yet so it <sup>Observ.</sup> pleases God, that not all who love and serve him, should go to heaven upon beds of roses: Nor is any man a loser, if God for his temporal affliction, crowns him with eternal happiness. And therefore where it pleases God to give (and not the People make) wicked and idolatrous Princes, for the sins of a Nation; there must good men expect persecution and affliction. And if Mr. Hobbs says true, then must no man speak against the golden Image Dan. 3. Nebuchadnezzar had set up; nay, every man ought to fall down and worship it; for he says, *Obedience is not rightly distinguished, if it be distinguished into active and passive*. But Mr. Hobbs has a help for this; for he says, *The City may command such a Worship of God, as is irrational; But if it be done at the* Cap. 4. art. 23. Annot. art. 7. cap. 16.

com-



Cap 15. art. 18 command of the Civitas to which the written Word of God is not known or received, he has shewed such a Worship of God to be rational. But, says he, Men must have a care that they do not worship God so, where he reigns by Covenant, as by the Covenant of Abraham; for there it is ill done, whether it be done by the command of the Civitas, or not.

Observ.

But whether as among the Jews heretofore, or with the Christians now, (for I hope he will not deny God to reign as much over Christians by Covenant, as ever he did over the Jews) how can any Man obey both, where contraries are commanded, if there be no passive obedience? Yet he makes it an easie thing to obey both God and Men actively, in the last chap. by distinguishing between things necessary, and not necessary to Salvation; as if humane power did never, nor will forbid things necessary to Salvation; but then Men may save themselves by saying one thing, and meaning another, and making themselves Hypocrites, to whom alwaies our Saviour pronounceth woes.

We find but small consort yet between these three. Our Author makes it Rational for Subjects to resist and depose. Grotius seems not to think so, both by the precepts of God, and the practice of the Primitive Christians, unless a King goes about to destroy all his Subjects. Yet too he saies, Gods precepts, many of them, though generally pronounced, have a tacite exception in case of highest necessity.

Observ.

But how shall I know whether in this? and therefore it is much better to obey, then venture to break Gods positive command. But Mr. Hobbs makes a subjection of Body and Souls absolutely, where God reigns not by Covenant; and there too by distinguishing between things necessary, and not necessary to Salvation.

Annot. art. 1.  
cap. 6.

Since there is so much contest about the power of the People, let us see what these three understand by the People. Mr. Hobbs understands by the People the Civitas which commands, wills, and does by the Will of one Man, or by the agreeing Wills of more Men, which otherwise cannot be done in an Assembly. Grotius no where that I know of, defines what he means by People: But our Author in the seventh Ground, when there is no Government, makes them a Rational Multitude; and when they have made themselves a Government, then (forsooth) to be a People.

*Salus populi suprema lex*, is when the safety of the people or Subject is in danger; then the supream Governor is not to take notice of any Mans particular interest whatsoever, he has sworn to the contrary; as when an Invasion, &c. is made, though the King at his Coronation has sworn not to oppress nor take without their consents, from any of his Subjects, any thing, which any of his Subjects hold of him, or any of his Predecessors; yet rather then an Enemy shall be relieved by any of his particular Subjects, to the endangering of the rest, he then may destroy it, for the safety of the people is the highest Law: and the end of all Government is, the preservation of the Subjects in general; and in such cases the lesser evil is to be chosen; and no Laws but will suffer a mischief, rather then undergoe an inconvenience: And therefore could not the Dictator be questioned for any thing done during his Dictatorship, because of the danger of the people; and so the Romans alwaies understood this Maxim of *Salus Populi suprema lex*.

Let us see whether these Men leave Posterity in any better condition, then they make the present Age, and see how they agree about succession, and

and whether a Kingdom may be aliened by the present King, or he, name his successor. Here we must look upon *Grotius* either naturally, or relatively, and yet too, as neither: As he is naturally a *Hogan Mogan*, he makes the King an Usufructuary only, and then he saies he can alter nothing at all, neither in part nor in the whole: And sometime like a Mercenary stipendary to *Lewis* the 13. against all his precedent grounds of the power of the People, and of Kings having originally all their Power from the contracts and agreement of the People, which yet does not cease their power, he makes neither King nor People judge of succession, for he saies, the People have transferred all jurisdiction from themselves upon the King and his family, neither during that, have the People any relicts of it; and yet he makes it a very hard question, whether the People may alter succession as to them who are not yet born, and determineth it affirmatively in these words, *Quare si populus, à cuius voluntate jus regnandi proficiscitur, voluntatem mutet, iis qui nondum nati sunt, ut quibus jus questum nondum est, nullam facit injuriam*; and the reason he gives (forsooth) is a very sorry one, and a similitude, *Ejus qui nondum natus est nullum esse jus, sicut nec ulla sunt accedentia rei non existentis*. Nay he does not stay here, but goes on and saies, *sicut autem populus expresse mutare voluntatem potest, ita & tacite credi mutasse*. But who shall be Judge of this implicate Faith, he saies not one word. Because of the damnable consequents, which must needs follow from this determination, we will examine all the parts of it.

Lib. 2. cap. 6.  
Para. 11.

Lib. 2. cap. 7.  
Para. 27.

Lib. 2. cap. 4.  
Para. 10.

He almost every where makes a great stir with *populus*, & *populus vult*, & *populus mutare potest voluntatem expresse, & tacite*; but never (that I can any where find) defines; what the People is. If he had said the People of *Rome*, or the People of *Athens*, or the People of *Syracuse*, he had said something, though nothing to his purpose. For when a Man speaks of the People of *Rome*, or *Athens*, &c. he speaks not formally of Men; as born in the *Roman* or *Athenian* territories; but as men who were *civitate donati*, which it may be were not the tenth part of the *Romans*, or *Athenians*; nor were ever the *Roman*, *Athenian*, or *Syracusan* People, free People *jure naturali* (as he saies) but by Civil sanction, having made themselves so, unjustly usurping dominion over the rest in their Tyranny and Dominions. It cannot be then that *Grotius* means by People, such People as were the *Romans* or *Athenians*: If by People he means any thing in the world, for above this 1700 years, there have not been any such upon the face of the earth (if the Inhabitants of *Switzerland* be not such, who taking advantage from the remiss Government of *Wenceslaus*, having beaten the Archduke *Leopoldus* about the year 1400, made themselves a Democracy, and have almost ever since continued Mercenary Man-killers to the interests of the Pope, the Kings of *France* and *Spain*.) *Grotius* then not meaning such People, as were the *Romans*, &c. I cannot imagine what he should mean by People, unless he means Men, Women, and Children of all ages and conditions, all of them in a parity or equal condition, abstracted from all Laws of God, or Man; and what a Harmony of Confessions would arise from such a rour, any sober wise Man may judge? Thus much for his *populus*.

Well, but be the People what it will, a beast, or no beast, a thing, or nothing; it is from its will, all right of reigning proceeds, *a cuius voluntate jus regnandi proficiscitur*. What, all Right of Governing, or Regal Power proceed from the People? faith, let *Grotius*, or any of his followers shew ever since the beginning of the world any King made by the People,

Observ.



and I will grant him all the rest, be it what it will: But see whether *Grotius* hath not a forked tongue, or not? here, and in twenty places more with *Notandums*, &c. he makes all Regal Power to be from the wills of the People. In his Epistle to *Lewis* the 13. he saies, *How beautiful, how glorious, how joyful to your Conscience will it be, that when God shall have called thee to his Kingdom, which alone is better then thine, thou maist confidently say: I have received this sword from thee for defence of Justice; this sword I return to thee, pure and undefiled, raply guilty of no bloodshed.*

observ.

So that if he saies true, that *Lewis* the 13. had his sword of Justice from God, then does he say false here, and in twenty places more, that all Power of Governing is from the wills of the people.

Well, but let us suppose a King made by the People; which is the party governing, and which is the party governed? all Government being in the predicament of Relation, where there is any one to govern or command, there must be another to be governed and commanded. Well then, here are two, the People, and the King made by the People, the one to govern, the other to be governed. Say now which is the party governing, the King or the People? it cannot be that the King should be the governing party, for he is but a Creature, and a thing made by the People, and the Creator cannot be ruled and governed by the Creature; the People then must be the party governing, and the King must be the party governed; the King therefore of *France* (whom he so much flatters) and all other Kings whatsoever, from this determination of *Grotius*, are the governed party, and the People their Subjects are the governing party. If therefore it be impossible to serve two Masters, who by equal right command, I would fain know how it is possible for a King to obey above Ten hundred thousand, every one of his Subjects having as much right to command him as another? and it is very like indeed to be a very well ordered Government, and much conducing to the benefit and safety of the People, where there is many Hundred thousands commanding, and one individual person obeying.

Lib. 2. cap. 16.  
Para. 16.

But good Man, he is very careful, that though the People give Kings all their Regal Power, that they part not with too much; nay though they make Kings, yet if you beleve him, they part with nothing at all, for otherwhere he saies, *Imperium quod per Reges exercetur, non desinit imperium populi*. Is not here a pretty play of a King, and no King? a King without Power, and a People with all Power? So that at the same time, that he flatters *Lewis* the 13. by telling him, neither King nor People are Judges of his succession, he had before given the People of *France* a power of altering the right of succession, without doing any wrong to his Son *Lewis* the 14, who now rules; for he was *res non existens* when he wrote this book *De jure belli & pacis*.

Lib. 2. cap. 7.  
Para. 25.

Sometime neither as *Hogan Mogan*, nor stipendary to *Lewis* the 13, directly; where he saies, *In alienable Kingdoms the King may disinherit his heir*.

observ.

Who gave him his Fee to say this? We cannot think it was *Lewis*, he denies all his Grounds to please him; yet *latet anguis in herba*; it may be, because *Henry* the First was younger Son to *Robert*, and *Robert* disposed his eldest Son who bare his name, and made his younger Son King, from whom *Lewis* derives himself. But how then can this stand with the 27 Para. that neither King nor People are Judges in succession? or if Power which is exercised by a King, does not cease the Power of the People, then cannot

Lib. 2. cap. 16.  
Para. 16.

not

not Kings give away their Kingdoms, nor disinherit their Heirs, for *delegata potestas non potest participari*.

Well, let us see his reason for this: He says, *Such a Kingdom is like other alienable goods*. Here the right of the alienation of a Kingdom is well proved, viz. I may give a poor man a penny; and therefore a King may disinherit his Heir, or give his Kingdom to whom he pleases. And so he says, *Jacob did disinherit Ruben*. What Kingdom was then given by any people to *Jacob*, to which *Ruben* was Heir? Besides, for ought he knows, or can find by *Cicero*, *Tacitus*, *Demosthenes*, *Cleon*, or any tale told by any Poet, the time when *Jacob* lived and died, was then when all things were common and undivided; and how then could *Jacob* disinherit *Ruben*? Observ.

Another Instance for the right of Alienation, is of *Dauids* disinheriting *Adonijah*. Whether this be true, read *1 Chron. cap. 28. v. 5, 6, 7*. And of all my sons (for the Lord hath given me many sons) he hath chosen *Solomon* my son to sit upon the throne of the kingdom of the Lord over *Israel*. And he said unto me, *Solomon thy son*, he shall build my house and my courts; for I have chosen him to be my son, and I will be his father. Moreover I will establish his kingdom for ever, if he be constant to do my commandments and my judgments, as at this day. Nor was it for any crime *Adonijah* did not reign after *David*; for *David* had sworn *Solomon* should reign, before *Adonijah's* usurpation, *1 King. 1. 13*. Grotius. Observ.

*Mr. Hobbs* makes no doubt, but a Monarch may choose his Successor, and by his will dispose of the Supreme power of the City. And in the next Article he gives him leave to give it, or sell it to whom he will. Cap. 7. art. 13. Cap. 9. art. 12.

*King James* was observed to make his Honors vile, because he exposed them to sale, and so conferred them upon unworthy men, not as they deserved them, but they were able to pay for them; thereby to satisfy his hungry Countermen, who were daily begging boons of him. How vile would this man make Majesty? how light the ligeance which is due not only by nature, but by oath, from all Subjects to their rightful Sovereigns? And, *The Crown of England has been so free at all times, that it hath no earthly subjection, but immediately subject to God touching the regality of the same Crown, and to no other*. And it is declared by the Lords and Commons in Parliament, upon demand made by the King, *That they could not assent to any thing in Parliament, that tended to the disinherison of the King and his Crown, whereto they are sworn*. How this can be consistent with this mans Sale of Crowns, I do not understand. Observ. St. 16. Ric. 2. cap. 5. Sir Ed. Coke, Inst. 4. par. p. 15.

Our Author is so in love with his Supreme and Absolute Trustee, that let him but do what he list, and he may say with *Tiberius Caesar*, *Εμὲ δαμόνιος γαῖα μυχθῆτω πῦρ*; *When I am dead, let the earth be mingled with fire*.

*Bodin*, in the last Chapter of his *Republique*; because neither from *Plato's* nor *Xenophon's* opinion, he can find Justice to consist in Geometrical nor Arithmetical proportion, will therefore have it to consist in Harmonical; he not understanding harmonical proportion: For he makes it consist in four terms, viz. 4. 6. 8. 12. and what proportion 4. has to 6. he supposes *Lex* to have to *Aequitas*; and what proportion 8. has to 12. (which is the same with 4. to 6.) has *Legis actio*, to *Judicis officium*; and what proportion 4. has to 8. has the Law, to the action of the Law; and what proportion 6. has to 12. (which is the same with 4. to 8. viz. double) has Equity, to the office of the Judge.

He has indeed taken four numbers, out of which Arithmetical and

H 2

Harmonical



(a) It self and a third part; for 4. is 3. and a third part of 9.

(b) It self and half as much. 12. is 8. and half 8.

(c) It self and an eight part; as 72. contains 64. an eight part of 64.

Suppose

Ela 64. D-la-

sol is 72. B-

fa-bemi is a

fourth from

Ela inclusive-

ly 85. Ala-

mire is a fifth,

it self, and

half so much.

96. Elami is

an eight from

Ela; 128.

double to Ela.

Multiply 64.

and you may

take the 64.

and infinitely

in rational

numbers

without fra-

ctions, as from

512. and so

forward.

Harmonical proportion may be taken; as 4. 8. 12. is in Arithmetical proportion, and 6. 8. 12. is in Harmonical; but 4. 6. 8. 12. is in Geometrical proportion. Harmonical proportion is, when three numbers are so ordained, that the proportion of the greatest number to the least, is the same with the differences between the two greater, and the two lesser: As in these three numbers, 6. 8. 12. the proportion between 12. the greatest number, and 6. the least number, is double; and the difference between 12. and 8. the greater numbers, is 4. and between 8. and 6. the lesser numbers, is 2. and 4. is the double of 2. And therefore 6. 8. 12. are in Harmonical proportion. 8. to 6. is *in proportione sesquitercia*<sup>a</sup>, which makes *Diateffaron*. or a fourth Note in Musick. 12. to 8. is *in proportione sesquialtera*<sup>b</sup>, which makes *Diapente*, or a fifth Note in Musick. 12. to 6. is *dupla proportio*, a *Diapason*, or an Eight. All other Notes are in *proportione sesquioctava*<sup>c</sup>, Nor can Harmonical or Musickal mediety consist in four terms or numbers, as *Bodin* would have it. But if either Justice, Equity, or Harmony be comprehended in the Writings of these three terms, *Grotius*, *Hobbs*, and *White*; then let me never expect Justice but from a *Committee*, nor Equity but from the University of *Bethlem*, and be eternally doomed to the Noise that is made at the Yelling of *Tom Sternholds* Psalms.

To what a condition here would these men reduce Mankind! For, what a condition are men in, where there are no Laws? To what purpose are Laws, where there are not they who may bear rule? *Parum est nisi sunt qui possint jura gerere*. And who would look for Rulers out of these mens Writings? where men must cut one anothers throats, to find them; and when they are found, then must men subject themselves to them, either body and soul actively, and not passively only, that is, suffer, when in their consciences they dare not act; or else to obey so long as the fickle and inconstant Multitude will pretend a necessity of rebelling or resisting, or judge it rational to resist and depose; and so to the old trade of cutting throats again: Whether this thing, or that thing? this man, or that man be Supreme? And after all this shall the poor Hobnail be no wiser, nor in any better, but much worse condition then he was before.

See Sir Edw.  
Coke Instit. 3.  
p. 35. 36.

It is rarely seen, that where men are not content with those Heirs which God gives them, that God does bless those men which are put in the place of such Heirs. But without all question, where Subjects are not content with what Sovereign God gives them, God did scarce ever bless any such as they made to themselves. And let any sober man consider, into what a miserable condition such Subjects or People have brought themselves: For they must needs live in continual fear, lest the true Heir should recover his right against him whom they have set up. But suppose that there be no fear that ever the right Heir should come into his place; yet they have given a president to all Posterity, not to submit to this whom they have set up: For why in reason should Posterity be obliged to obey this, when as they were not bound to obey the right Heir? Neither was Subjects condition under Monarchy ever so bad, but the endeavoring to reform it by force of Arms, has made it much worse. The examples of this are infinite. It is usual therefore, where Subjects have taken up Arms and deposed Government, to alter the *Species* of their Government. For this, if the Government be converted from *Monarchy* into any other, See Mr. *Hobbs* Annotation upon the 3. Article of the 10. Chap. *De Cive*.

FINIS.

## POSTSCRIPT.

*The Observators charge against his Adversaries grounds and superstructure, wherein they all agree.*

**S**ince there is so little harmony between these Three in their superstructure, not only to one another, but also to themselves; it would make any man suspect, if there were nothing else, that their grounds were false. We will therefore, before we state our own principles and superstructure, set down theirs, and shew wherein they all agree, and wherein we differ. And,

1. Herein do all my three Adversaries and I differ: They all say, that by Nature all men are in a like equal condition, and out of society, until by voluntary pacts and acts of their will they shall have formed themselves into society. I say, that men are by Nature born into society and subordination. To warrant this, I have not only the consent of the present Age, but the constant practice of all Ages in the world, from the testimonies of all Prophane and Sacred History; and that not only since the Flood, but before, if God made *Adam* an universal Monarch, as well over his wife and children, as over all other creatures; and that that there was a constant succession of the Patriarchs in the First-born, from *Seth* to *Noah*. Whereas none of them can give testimony of one man in the world that ever lived out of Society, or tell when, or who first violated Nature so as to introduce it; and from whence it hath ever since continued all over the world, against the right of Nature.

2. They say, All power in Government was originally in the People. I say, that for above three thousand years after the Creation (excepting the *Locdemonian* Duarchy) was no Government but only Monarchy; nor was there any of them derived from the People: And that wheresoever since the Creation, the People did assume to themselves the Supremacy, they did it by unjust usurpation. Beside Nature, I have almost infinite places in Sacred Writ to warrant that all Supreme power is from God immediately; They, no colour of any one.

3. They making men by Nature to be out of society, and by acts of their wills to be in society, make Nature to be depending and subservient to the wills of men; whereas Natural causes do immediately proceed from God, and are above the will of man. Society therefore being natural, the actions of the wills of the most perverse and wicked men in the world could never make them out of society; but where they would not be commanded by their rightful Superiors, fell a commanding and obeying among themselves.

4. They all not only invert Nature, and make Wills and Pacts superior to it in the cause of Society; but all of them make the natural relations of rightful Princes and Subjects to be dissolvable by the wills of men; yet after a different manner. *Grotius*, when there is a necessity, makes them dissolvable by the Subjects: Our Author, when the Subjects judge it reasonable: And *Mr. Hobbs*, when the King or *Civitas* will give or sell the relations. Whereas Regal power being Gods ordinance, is therefore superior to mens wills, and cannot be aliened or dissolved by the will of man.

(h)

s. They



5. They all not only invert Nature, and make it alterable by the will of man, but make the Law of Nature, or God, to take its origination from the civil pact or will of man; whereas the Law of Nature is eternal and immutable by the will of man, and connatural with every man, and always had, and ever shall have a like obligation upon all men in all ages and places.

6. I say, They not only blasphemously make Nature and the Law of God alienable, and depending upon the will of man; but also most illogically confound the relations of agencie and paciencie in the same subject, and make the *Cives* to constitute the civil pact, and to be subject to it; whereas *Omnis potentia activa est principium transmutandi aliud*.

7. They invert Grammatical construction, in making the *Cives* who constitute the *Civitas*, the patient or governed; and the *Civitas* who accepts the wills of the *Cives*, to be the agent or governor: Whereas the contrary is true in both; for, *Obligans* is the governor who does will, and *obligatus* the governed who accepts the will of the governor.

8. They all most ridiculously make the Creature, the *Civitas*, superior to, and the Governor of the Creator, *viz.* the *Cives*; whereas it is impossible any Being should be prime or superior to the cause of its being.

9. They all of them make the *Cives* to endue the *Civitas* with that which none of them have either separately or conjunctly, *viz.* a power of life and death, and creating property; whereas *Nil dat quod non habet, & nemo potest transferre id in alium quod ipse non habet*. If all these things be true, and that I have not unjustly charged them in my *Observations*, how contrary they are not only to one another, but to themselves in their superstructure; then let the world judge, especially you my dear and native Countrymen, whether grounds so unnatural, so blasphemous, so illogical, so contrary to common sense and grammatical construction, so ridiculous and impossible, should be worthy to be accounted the Principles of Humane society: Or whether they ought not to be exploded by mankind, as fit for nothing but to abuse ignorant men, and to open a gap for Sedition and Atheism. If I have here, or heretofore unjustly charged them, two of my Adversaries are alive, and of age, and may answer for themselves; and no question but *Grotius* hath followers enough who may vindicate him, if he hath wrong done him. Or if I have committed any of these things, in these *Elements*, let them make it appear, I will thank them for it.

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## A Premonition to the Reader.

**B**Eside that part of this Treatise, which shews the causes and means by which men attain Arts and Sciences; in this Preface, Observations and Elements, I have designed three things. First in the Preface, I designe to demonstrate, That it is impossible that the Cause of Humane Society should be originally created by the pacts and wills of men; and the occasion of writing these Observations. Secondly, in the Observations, I designe to shew, That the Causes of Humane Society do not appear from these mens Grounds and Principles. Thirdly, in the Elements, I endeavour to demonstrate the Causes of all Humane, Christian, and Legal Society. And if any of my Adversaries, or any man else, shall shew me any errors in any of them, I profess I will ascribe it as an act of Friendship to him.

I have one request more to the Reader, That he would look upon all these Elements and Observations (except one half-sheet added to the Observations) to be passed the Press, before His M A J E S T I E S Acknowledgment or Restoration; until the last Book, or one sheet or two of the Fourth Book of Justice, &c. And to insert in pag. 9. of this Preface, line 22. after— [For which no reason can be given] — what is contained in the Margin, from — [ These things thus premised, &c.]



ATTENTION TO THE READER

THE EDITOR OF THE NEW YORK TIMES  
HAS THE PLEASURE TO ANNOUNCE  
THAT THE NEW YORK TIMES  
HAS BEEN REPRINTED IN  
THE NEW YORK TIMES  
AND IS NOW ON HAND  
FOR THE SALE OF THE  
NEW YORK TIMES  
AND IS NOW ON HAND  
FOR THE SALE OF THE  
NEW YORK TIMES

THE NEW YORK TIMES  
HAS BEEN REPRINTED IN  
THE NEW YORK TIMES  
AND IS NOW ON HAND  
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NEW YORK TIMES  
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NEW YORK TIMES

TO THE NEW YORK TIMES

**ELEMENTS**  
OF  
**Power & Subjection:**  
Or the Causes of all  
Humane, Christian, & Legal  
**SOCIETY.**

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*Vir bonus est quis ?  
Qui consulta Patrum, qui Leges juraque servat.*

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By **ROGER COKE.**

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**LONDON:**

Printed by T. N. for G. Bedel and T. Collins,  
at the Middle-Temple Gate. 1660.



ELEMENTS  
OF  
Power & Subjection:  
Or the Causes of it.  
Human, Christian & Legal.  
SOCIETY.

Qui constituit Imperium, qui Leges promulgat, &c.  
Mr. Jones of the 3

By ROGER COKE.



LONDON:  
Printed by W. B. for J. B. and J. Collins,  
at the Middle Temple Lane, 1770.



TO THE  
R E A D E R.



Ans thoughts of Life, and Living, are odd things; pritty Antitheses, he thinks his whole Life (though he should live a Thousand years) too short; and yet every day, nay hour of his living, too long. Vicious Men therefore misplace their happiness, in entertaining worldly pleasures, thereby to delude, and spend their time, which they desire so much to continue in their Life, that in their living, it might not seem to be. Virtuous Men have the same thoughts of Life and living with vicious Men, but their actions discern them: For those hours, which in their Life would otherwise seem tedious to them, they entertain either in the Contemplations of God, or his Works; or by doing virtuously, sweeten those sowre effects, which idleness causes: So that the old Philosophers would affirm;



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To the *R E A D E R*.

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*Meno : prope  
finem.*

That not Years but Virtue should be the measure of Mans life. And this reward hath God (the Author of Virtue in Men, as *Plato* divinely affirms) given to virtuous Men, that they not onely take pleasure in remembring time past, but also hope well in time to come, notwithstanding all the frowns of perverse and wrinckled Fortune; whereas vicious Men are onely pleased with deceiving the present time, ashamed to look back upon their actions past, and affrighted upon the apprehensions of death, and worldly calamities which (notwithstanding all their *Proteus* shapes and *Janus* faces) happens to them, as well as virtuous Men, in time to come.

There is no time wherein virtuous Men may not contemplate God either as God, or in his Works, or do well; whereas many times vicious Men (though never so rich and able to maintain their Vices) are either wearied with them, or have not means to attain to what they call the fruition of them; and then they may be truly accounted miserable, because they know not what to do, and are neither pleased with the remembring of what is past, nor can hope well in time to come. And indeed, no Man is so miserable as he who knows not how to entertain a day, but by being vicious in it. Vicious Men desire that all their actions should be buried in oblivion with them, and will make it a cause of quarrel for any Man to mention those things they daily do as their actions; whereas it is onely Virtue that does eternise Men to all Posterity; for the whole Earth is a Monument for famous Men, and their Virtues shall not onely be testified by inscription of Stone at home, but by an unwritten  
Record

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To the READER.

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Record of the Minde, which more then any Monument, will remain with every one for ever.

Sir *Francis Bacon* in his Life of *Henry* the Seventh, compares Times to Ways, whereof some are more uphill and downhill, some are more plain and even; the one is better for the Reader, the other for the Liver: Sometime it pleases God that Virtue should be (as it were) so in fashion, That to be virtuous, is commendable, and rewarded; other while, Virtue is not onely persecuted by all the contrary names, but virtuous Men are butchered, imprisoned, sequestred, &c. and for no other cause but onely their Virtue. *Tacitus* accounteth it a rare felicity of the Times, whenas an Historian may without danger Record the History of the Times.

*Polybius* affirmeth of truth, That she ought to be esteemed of Men as the greatest Goddess, and that the greatest Power ought to be attributed to her: For though all Men oppose her, and sometime many kinds of verisimilitudes and appearances stand against her for a Lie; yet I know not how, she by her self insinuates her self into the mindes of Men: And sometime on the sudden shews how potent she is; and sometime after she hath been along time obscured by darkness, at length of her self prevails, and expugneth the Lie. If a Man vary the terms of Truth and Lie, into Virtue and Vice, this affirmation will not less hold true. Virtue was never so oppressed by Ignorance and Faction, but that the virtues of good Men shall finde honorable mention afterward: And Vice and Faction, however cryed up at present, shall hereafter be fully laid open, and their deformity discovered



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To the READER.

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covered to all Posterity. Virtue is the same in all Ages, and most amiable in her simple nakedness : and it is Vice which hath need of false glosses, and hath such specious shewes and pretences put upon it, to make it seem Virtue, which fucous and false paint continues no longer then the present Faction.

Of all Virtues next after Religion, Justice is the most worthily ranged in the first place, not only as including all other Virtues, but as excluding it all a Mans actions are rendred as Vile and contemptible, other Vices are like Moats in running waters, ( and the smallest Moats are easilest seen in purest streams ) but injustice is like the poysoning the Fountain, which corrupts all the stream. There is no Man that is so perfect, but some spots and stains may be spied in his actions, which are soonest spied in the best Men ; but no Man ( Heathen or Christian ) can deserve the least reputation of being good or Virtuous, who is an unjust Man. It was not *Alexanders Venery*, Ryot, Drunkenness, and Captivity to the *Persian* Effeminacy ( Vices though bad enough ) but his *occidit etiam Callisthenem*, that was put in Counterpoiz to all his Virtues. It is Justice, which ( next after the most immortal, greatest best God and Religion ) fabricates, connects and establisheth Nations and Kingdoms in Unity and Peace. It is injustice which ( next after Gods punishments for their sins ) subverts them to the ruine of the greatest part of the inhabitants ; so that Justice deservedly hath the pre-eminence of Virtues next after Religion, and Injustice is the foulest and vilest of all Vices, after Atheisme.

Senec. de beneficiis.

Though

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To the READER.

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Though Justice be so high and noble a Virtue, yet I think there was never any thing by learned Men (as Xenophon, Plato, Aristotle, Bodin, Grotius) more mistaken. Not that I deny but that many Virtuous Men from their innate good nature, have in their actions practised that, which hath been rarely well defined; like Men who by a habit speak well, yet cannot give a Grammatical construction of their speech; or like the Romans, who though the Grecians were best at the Theory of Rhetorick and Poettry, were the best Orators and Poets; or like the Physicians, who in blood-letting supposed the circulation of the blood, yet none asserted it before the most renowned Philosopher Doctor William Harvey; or like a Musitian, who composes well, yet understands but little in the Theory of Musick.

For my part, as I hate Flattery as one of the basest Vices, and the most inconsistent with Ingenuity, or Integrity, so had I much rather that these Elements should be ΚΤΗΜΑΕΣΑΕΙ, though a present sufferer for them, then by any sinister means to attain to any greatness whatsoever.

All things are at first appearance, curiously scanned, and censured by Men, it may be most by them, who least understand them; for, *Nihil est facilius quam reprehendere alium*. I desire nothing else of any ingenuous Reader, then that in censuring any thing in this following discourse, he would declare what he would have instead of it.

*Carpere vel noli nostra, vel ede tua.*



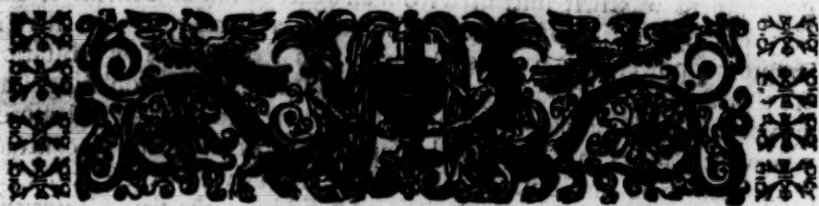
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To the READER.

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I know it is *Humanum errare*, and I not having a beaten path to direct me to my journey's end, and being unfit for so great an undertaking, although supplied with greater helps than I have found, shall very probably be subject to stumble, having had so dark and feeble means to keep my self upright. However, in all this Apostacy of Men in general, from all Faith, Religion, and Moral honesty, I have endeavored to shew from what causes, all Virtues as well Theological, as Moral, flow; and that Men by forsaking them must necessarily fall into all those calamities, and confusions which now involve us. Whatsoever therefore my errors and defections are, they ought rather to be forgiven, than to cause anger in any candid Reader: for my part, I profess ingeniously, I will ascribe it an Act of friendship in any Man, who shall direct my going in a more plain path, or shew me where I have strayed out of the way, by treading in this.

THE



# THE APPARATUS:

OR,

*The different Nature of Man from other Creatures:  
And why only Government is necessary to Man-  
kinde.*

**S**INCE there is nothing more manifest, then that there is every where in the World *Government*; for no man can say, That this thing is his, or that thing another mans; but he must presuppose a Superior Power, which gave him, and the other man a Right in this, or that thing: And since from the evidence of all Sacred and Prophane History, no time was ever recorded, in which men were not in subjection to one another: And since from\* these mens Principles, it is not possible that any Power in Government can be derived; For to suppose by the Law of Nature all men to be equal, and to have a common and undivided Right to all things, it is impossible that they can create a power which may give Law, Property, and Power of Life and Death, when as they themselves have none at all; But suppose all Men are by nature equal, and yet have a right to create a supream Power, which may give Property, yet then it must follow, That all the Men of the World must be subject to one Individual Government: For *ex hypothesi*, the Inhabitants of Greece have as much right to all the things in Britain, as the Inhabitants of Britain have; and the Men of Spain have as much right to all the things in Italy, as the Italians have; and so have the French to all things in Italy, Germany, Persia, &c. Nor can the Inhabitants of France, Germany, Spain, &c. frame to themselves any Government; for *ex hypothesi* by the Law of Nature, the Persians, Indians, Moscovites, &c. have as much right in France, Germany, Spain, &c. as the French, Germans, and Spaniards have. And to suppose, that by the Law of Nature all Men have all things in common; and to suppose, that whatsoever is or shall be renewed in Spain, England, France, &c. is due by the Law of Nature only to Spaniards, Englishmen, and French, &c. is to suppose a contradiction and impossibility.

\* *Viz.* Grotius, Hobbs, White.

K

Nor



Nor is that Fancie less groundless, which supposeth that Regal power or government was first instituted from an aggregation or consent of Families: For how is it possible there should be a Family, where there is no Supreme power which gave Property; in that place and habitation where that Family is? Nor where there is no Law precedent obliging, can it be expected that any man will (where he may be free at his own pleasure) be a Servant: Nor can it in reason be supposed, that any man will contract with another to be his Servant, whereas he may as well expect to be his Master. It shall be therefore our endeavour to find out the true Causes and Principles of Power and Subjection. But before we proceed, it will not be amiss to see, in a short view, the natural difference between Man and other Creatures of this inferior orb; and why Humane or Politick Government is only necessary to Mankind.

Of all the Creatures of this inferior orb, only Man uses Reason; by which with the help of his Memory and Experience, he proceeds from things manifest and known to the Understanding, to find out things less known, and more obscure: yet still so, that subsequent Generations may infinitely adde to what precedent Ages had found out; whereas other Creatures do by an impulse of Nature (being taught of no Creature, nor from any observation by themselves) insite and connatural with them, at first attain to such perfection, that in succession of time nothing is added to it. Thus we see all Birds at their first trial make their nests with as much art and ingenuity, as those that do live longest; And so the younger Bees make the höncomb as perfect as those who had done it twice or thrice before. And certainly it is an admirable thing to consider, with how great providence these smallest Creatures and imperfect Animals do choose out places for their conceptions, even before they be living creatures, and but only so in power; and with what unimitable art they build, fortifie, and hide the place wherein they repose them. I have seen an *Indian* Birds nest, which was made upon a small bough growing over waters, which bough was too weak to support the weight of a Monky, (the Monkies in those parts of *India* use to prey upon young Birds) and provident Nature points out these places to those Birds for the security of their young ones from the Monkies; for of all terrestrial creatures, only Men and Monkies, and their kindes, swim not naturally; and the Monky, if he in seeking to get the young birds, falls into the water, drowns himself.

I have with great admiration seen Frogs (which are usually generated in the moneth of *March*) confidently and carelessly swimming croaking upon one another upon the surface of the water, whenas Horses and other cattel have been there; but upon the coming of Ducks (who naturally prey upon and devour them) they have been all hushd and gone, and not one to be seen: It being sure worthy admiration, that Providence should so direct those spurious and imperfect animals, and but of yesterdays being, and not of much longer continuance, to know without any apprehension of danger those creatures who are not hurtful to them, and to fear and avoid those who are enemies and prey upon them. Neither is Providence less seen in all creatures (if a man considers it) in the preservation of themselves and their young ones; so that a man must needs confess, that in them is some particle of Divine air, and this their unlearned art and wisdom is rather to be admired than imitated by us.

Man

Man by his observation and experience findes out what things and Creatures are hurtful or helpful to him ; other Creatures by an instinct of Nature, at the first sight know what things and Creatures are hurtful to them or not : thus we see the timorous young Hare feedes securely among Horses and Cowes, and the oldest Hart flies affrighted from the smallest dogge. Man can never attain to the knowledge of what things conduce most for his corporal preservation ( and therefore the oldest and most experienced and learned Physitian may to morrow find what the day before he was ignorant of ; and yet shall never attain to the perfection of knowing what is best for his own body ) which other Creatures ( by avoiding those things which are hurtful, and choosung those things which are most beneficial for themselves ) do.

The careful Navigator by the help of some Theorems of longitude and latitude, and the use of his Card and Compasse, sailes from one Coast to another, whereas other Creatures by a propense disposition to this or that place, without any observations and direction of their senses, fly to other regions where they never were before. So Faulcons, Wildgeese, Woodcocks, &c. come from other regions into England in the Autumn, and at the Spring forsake us. And Swallowes, Martyns, Hobbyes, &c. which brood with us in the Summer, when the Autumn approaches, leave this Clymate for another, to which they cannot attain by any sense or observation of their own. A Gentleman living in Buckingham-shire had a Beagle sent him by Sea from the most Eastern part of Suffolk to London, and from thence was conveyed by water into Buckingham-shire : some time after, upon some distaste taken by the dogg, he returned home to his old Master by land, which was above an hundred miles: But what is most admirable is, that *omne genus Balana*, as Dolphins, Whales, Porpices ( which do not keep in shoales or company ; and although Fishes are *animalia vivipara*, that is, bringing forth their young ones actual living Creatures, and do generate *viviparorum more* ) should in that vast body of the Ocean ( when as by reason of the grosseness of the Medium, they cannot use their sight at any small distance, to perceive when they are neer one another ) at the seasons of generation find one another. To proceed herein, were proper for *Plinies* natural History, or *Aristotles* History of living Creatures.

All Creatures are either *animalia nociva*, hurtful Creatures, which prey upon, and devour other living Creatures ; or *innocua*, which feed and eate upon such vegetives as grow and are renewed by the earth or water ; or *sociabilia*, which are only Men who are better or worse then other living Creatures accidentally. If they suffer themselves to be enslaved by their depraved passions and appetitions, then they become worse than any hurtful Creature ; but if they ( by depressing their passions and ill affections ) rule their actions by reason, they far transcend all other Creatures.

The end of Government is twofold, either to preserve the governed in peace within themselves, or to protect them from forraign force or power ; in neither of which respects is Government requisite to other Creatures besides Men : For *animalia nociva* are *solivaga*, and therefore no Government is required to keep them in Peace one with another, whereas they do not company one with another. And many other living Creatures who are not by nature hurtful, do not keep in companies, and therefore no Government to preserve themselves in peace, is requisite to them neither. It is



an admirable thing to contemplate how nature has granted to these hurtful and robustious Creatures, armes consentaneous to their force, to protect themselves from outward force and violence of those Creatures who are enemies unto them; as the Lyon his paws and tayle, the Bear his paw, the Fox, Otter, Brock, &c. their Teeth; whereas other Creatures who are by nature denied those armes to defend themselves, what a strange cunning and dexterity has nature given them in the preservation of themselves, from those Creatures who are hurtful to them, and prey upon them.

Those Creatures who live in Community one with another, by desiring the same things, and avoiding the same things, to direct their actions to a common end, that their companies are obnoxious to no seditions; and therefore Government is not necessary to them neither, and of them is Man usually Protector against their ravening enemies.

Men differ from other Creatures, for they are neither *Animalia solivaga*, nor *gregalia*, but *sociabilia*, that is, living in conversation and subordination; and Man is born a living Creature, apted potentially for society, and alike naked and unarmed as one whom nature intended a sociable, peaceful, and politick Creature, and to be governed rather by reason, than force in all his actions; and therefore has endued him with hands and ingenuity, that having by his ingenuity purchased himself necessities, he might with his hands cloathe, feed, and defend himself.

In all other Creatures the Laws of Nature (that is, those bounds which God by Nature has set them) are securely obeyed and never transgressed by them, and are only transgressed and violated by Man; and therefore the Laws of Nature are not sufficient for the preservation of mankind in Peace; for by reason of the discords which arise naturally in Men, for Honor and preheminance. Secondly the appetite of possessing all things. Thirdly the desire to excell other Men in wisdom and policy, and to that end are studious of novelty which causes seditions and civil wars, that they might be esteemed wiser then the men of this present Age, or their predecessors; by reason of which, present coercive humane Laws are necessary for preserving peace among Men, that the feare of a present punishment may deter men from those things, which because of their Infidelity and Atheisme they otherwise would not feare.

I say, this Humane Power, from whence all Humane Laws are derived, is from the Law of Nature, and if it shall seem strange to any Man that it should be Humane, and yet derived from the Law of Nature, let that Man consider that only Man is a Humane Creature, and does Humane and reasonable actions; and yet it is from the Law of Nature, that only Man is a Humane Creature and can do Humane and reasonable actions. And the Fathers and Husbands power is Humane; yet I think no Man before Mr. Hobbs did ever deny, that they were from the Law of Nature. I know in usual speech the supreme power of Nations, is called Politick power, which is a mistaking of the cause for the effect, for it is not the power which is politick in the cause; but in the effect and exercise; as take an instance of my meaning, All Father hath divers Children of several dispositions, one disposed to learning; another endowed with bodily strength, and averse from learning; another hath not bodily strength, yet a desire to learnings but by reason of his gross *Minerva*, is not probably qualified to attain to any great progress in it, &c. The Father breeds up his Studious

Son

Son in literature, his Active Son which hath no disposition to learning he makes a Soldier, or Seaman; his Duller Child he binds an Apprentice to some Trade, &c. Though the Fathers power be Natural, yet this exercise of it is Politick; so though Regal Power be from the Law of Nature; yet must the exercise of it be Politick. And therefore Humane Laws, and the exercise or Politick use of Humane Power, cannot (though the Power of all Kings be alike, and from the Law of Nature) be the same in several Nations, but different according to the nature, manners, and dispositions of the Inhabitants. And we see the same King governing in divers places, by divers Laws, accordingly as his Subjects are different in manners, and dispositions. Humane Laws therefore, and the Politick use of Regal Power, cannot be as the Laws of Nature are immutable, and the same in all parts of the world, but ought to take their origination from the nature and disposition of the Governed, and are alterable as Mens vices and manners do alter.

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The

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## The Method observed in the subsequent T R E A - T I S E, and the Reason of it.



All Science, all Learning, and all Reasoning by the Judgment of Aristotle is begotten from pre-existing Principles, which being indemonstrable in themselves, do demonstrate them. And since that all Society, or Power and Subjection whatsoever, is created by Divine or Humane Laws; and since it is impossible, there should be Lex Lata, where there was not Jus Legislativum Superior, and the cause of it: In the First Book we treat of Rights, Laws, Virtues, the Obligation of Laws; and of Pacts, Promises, Vows, Leagues, and Gifts, and from whom Men become obliged to them.

These things thus premised, the Second Book treats of the Causes of all Humane, Christian, and Legal Society; of Regal and Magistrates Power; of the Three Species of Government, viz. Monarchy, Aristocracy, and Democracy, of Sedition, and the causes of it: Of the Fathers, Husbands, Masters, and Ecclesiastical Power.

The Third Book treats of Subjection, Succession, and the Municipal Laws of this Nation.

The Fourth Book treats of Justice, Obedience, Judgment, and Equity.

The Fifth Book treats of the first Planting of Christianity under the British and Saxon Kings; and of the Freedom of the British and English Churches before the Conquest; and how far the Kings of England had exercised their Ecclesiastical Jurisdiction; and how both British and Saxon Kings had been Nursing-Fathers to the Church of Christ; and how far since the Conquest, the Kings of England had exercised their Jurisdiction in the Assertion of their Regal Power, in defence of the Church, until Henry the 8<sup>th</sup>, and of the Reformation made by Hen. 8. Edw. 6. Queen Elizabeth, and of the Ecclesiastical Laws made by them, Queen Mary, King James, and King Charles.

## A more particular Survey of the Contents of the First Book.

- Chap. I. **T**He First Chapter not onely treats of those Rights which must necessarily precede all Humane and Ecclesiastical Laws; but also of those Rights which are created by Humane Laws.
- Chap. II. Treats of Divine, Humane, Ecclesiastical, and Despotical Laws, and from whence they are derived.
- Chap. III. Shews what Virtue is, and the causes of all Theological, Moral, Humane, Prudential, and Personal Virtues.
- Chap. IV. Treats of Particular, Moral Virtues, and
- Chap. V. Proves them to be commanded by God in the Old and New Testament.

Chap.

Chap. VI. Demonstrates the Obligation of Divine and Humane Laws upon the Persons and Consciences of Men.

Chap. VII. Is of Promises, Vows, Leagues, Pacts, or Contracts and Gifts, and from whence Men become obliged to them; and does demonstrate, that it is impossible that any Law or Legislative Right can arise from the Pacts or Contracts of Men; which concludes the First Book.

## DEFINITIONS.

**J**us is a Right, Due, or Property in God, principally and absolutely; or in some *Jus*, quid. Man, or Men, by some Divine or Humane Law, excluding all others, but him or them from whom it is derived.

First, All Right is either *Jus Divinum* or *Naturale*, and this Right is onely, primely, and absolutely in God, and incommunicable to any Creature: Or

The Specifications of it.

Secondly, *Jus Humanum* is a Right which Men have from the Law of Nature: Or

Thirdly, *Jus Ecclesiasticum*, a Right by which the Tribe of Levi did under the Old Law, exercise their Priestly Office and Function; and a Right by which Bishops, Priests, and Deacons, among Christians do execute their Office and Functions: Or

Fourthly, *Jus Legale*, a Right which all Subjects have in their Estates and Goods: And this Right is either *Jus Proprietatis* or *Jus Usufructuarium*.

2. Nature is either that eternal Being, which ever was in God, which Men call *Natura Naturans*: Or that first Being, which is in any Creature superior to the Will of any Creature, and created onely by God; and this Nature Men call *Natura Naturaliter*; the depraved sinful Nature of Man was not originally created by God, but afterward made by Man.

What is Nature.

3. *Jus Naturæ Naturantis*, is that Right which must necessarily precede and create *Lex Naturæ*.

What is *Jus Naturæ Naturantis*.

4. *Jus Naturæ Naturaliter*, is that Right which is created by the Law of Nature; but because this Right is proper to Man onely, we will call this Right a Humane Right: As also that Power which is created by the Law of Nature, although it be Natural Naturaliter, yet being proper to Man, we call it Humane Power.

What is *Jus Naturæ Naturaliter*.

5. A Law is the declared Will of him who by right commands, forbids, or permits a thing, together with a penalty annexed for not observance.

What is a Law.

*Lex dicitur à ligando, quia obligat*, says Isidore rightly.

Etymologic of Lex.

Common



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## Common Notions or Axioms.

1. **A**LL Right which any Man, or company of Men have, is derived either from the Law of Nature, or some Divine Positive Law declared in the Scriptures, or from some Humane Law, or particular Custom, which is always presumed to be created, or permitted by Humane Laws.
  2. Humane Laws and Customs refer to some particular place or Countrey, as they are permitted or imposed by the supream Power of that place or Countrey: viz. By them who have right to impose or permit them.
  3. The Laws of Nature oblige all Men of all conditions alike, without exception, and are eternal and immutable by Man, and are, and always were con-natural with all Men.
  4. No Being can precede, or be superior to the cause of its Being.
  5. All Causes are superior, and precede their Effects.
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THE

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# THE FIRST BOOK.

## CHAP. I.

*De Juribus.*

1. **E**x Humana lata has by the second Notion no being, but as it is caused or created by him, who has the *Fus Legislativum*. *Lex Humana lata* therefore cannot by the Fifth Notion create *Fus Legislativum*. *Fus Humanum Legislativum*, is not from any Humane Law.

2. If *Fus Humanum Legislativum* were from Divine positive institution, then by the Fifth Notion must the Scriptures precede all Legislative

Right; but this is evidently repugnant, not only to the Scriptures themselves, who testifie not only the Right which Fathers and Husband have over their Children, and Kings over their Subjects long before God revealed them by *Moses*; but also this Lawgiving Right is in every place of the world, whether the Scriptures be received or beleaved, or not. It is evident therefore that this Law-giving Right is not created from Gods positive Laws in the Scriptures.

3. *Fus Humanum Legislativum*, is not by the first Proposition from any Humane Law; by the second Proposition, *Fus Humanum Legislativum* is not from Divine positive Laws. Therefore by the first Notion, *Fus Humanum Legislativum*, is from the Law of Nature. *Fus Humanum Legislativum*, is from the Law of nature immediately.

4. By the third Notion the Laws of Nature are, and alwaies were con-natural with Men; but the Right which God gave the Priests under the old Law, and to Bishops, Priests, and Deacons, under the new Law, hapned long since, Men were borne in the world, and therefore the Ecclesiastical Right of Bishops and Priests, is not from the Law of Nature. *Fus Ecclesiasticum*, is not from the Law of nature.



Nor from any humane law.

5. If Humane Laws could create the Right of Ecclesiasticks; then by the 2. *Notion*, he who may by right create Humane laws, might also create this Ecclesiastical right. But this is evidently false; for all Kings, Fathers and Husbands have a right of creating Humane laws; but none have the right of creating the Ghostly right by which Ecclesiasticks exercise their function or office. This right therefore is not created by any Humane law.

All Ecclesiastical right is by divine positive institution.

6. By the 4. *Propos.* Ecclesiastical right is not from the law of Nature. By the 5. *Propos.* it is not from any Humane law; therefore by the 1. *Notion*, it is by Divine positive law or institution.

*Jus primi occupantis*, is not from any humane law.

7. By the 2. *Notion*, all Humane laws are made by men; but it is impossible by the 4. *Notion*, that men should make laws, where no men are; therefore cannot *Jus primi occupantis* be from any Humane law.

Nor from divine positive laws.

8. This right of first possession not being only due before Gods revelation of himself in the Scriptures, but also where they are not believed or received; it cannot be by the 4. *Notion*, from Gods divine positive laws.

It is from the law of nature.

9. All Right, by the 1. *Notion*, being either from the law of Nature, or some Divine positive, or Humane law; and this right by the 7. *Propos.* not being from any Humane law; and by the 8. *Prop.* not being from Divine positive laws, it is by the 1. *Notion* due by the law of Nature.

Annot.

It is proved lib. 3. cap. 11. that Subjection is natural; and therefore no natural Subject can put himself out of the power of his Sovereign: And by consequence, this right of first occupying or finding, by any Subject or Subjects, is the right of the Sovereign in whose power such Subject or Subjects are; and such Subjects are the Instruments of occupying, or invention, by which this right does accrue to the Supreme Power.

*Jus gentium* is from the law of nature.

10. *Jus Gentium*, is a right which every Nation hath to send Ambassadors to mediate Peace with any other, although in publick hostility with them: And this right not being topical, but general, by the 3. *Notion* it is from the Law of Nature.

The right which separated persons for the worship and service of God have to tythes is from the law of nature.

11. The Usufructuary right, which separated persons for Gods divine worship and service have to Tythes, is not only general, and therefore by the 3. *Notion*, due by the Law of Nature: but also being due, and yet by no Humane Law; and being due as well where Gods positive Institutions are not believed and received, as where they are; This right, by the 1. *Not.* is due from the Law of Nature; and by consequence, the detaining of them by the Laity, is a violence upon the Law of Nature, for no Humane Law can dispence with the Law of Nature.

*Jus subditorum* twofold, *Proprietatis*, or *Usufructuarium*, is from humane laws.

12. The right of Subjects is either an Usufructuary right, or a right of Propriety. *Jus Proprietatis*, is when any Subject, or company of Subjects have by some Law a right to any individual thing, excluding all other but him from whom this right is derived, viz. the Supreme Power of the place. An Usufructuary right is, when any man or men have no right of Property to the thing, but only a right to the profits arising from it; as a Parson, Vicar, Judge, and Fellows of Colledges have no Property in the Parsonage or Vicarage-house or glebes, Judges place, or Fellowships of Colledges. And these rights neither being due from any Law of Nature, nor any Divine positive Law, are by the 1. *Notion*, from the Temporal or Humane Laws of every Nation.

13. *Jura sanguinis, nullo jure civili dirimi possint.* Nor is Primogeniture only preferred, where Gods revelation of himself in the Scriptures are received, but where they are not received: Their right therefore of Primogeniture is from the Law of Nature.

The right of Primogeniture is due by the Law of Nature.

14. It is true, that Divine Laws oblige all men alike; and so Humane Laws oblige all Subjects alike: But the Right or Property created by Divine or Humane Laws, by the Definition, is in some man or men, excluding all others but him or them from whom it is derived. Right or Property therefore being such a mans, excluding all others; it cannot be where it includes all men, either as Men, or Subjects. Thus the Legislative right is from the Law of Nature; but every man, as man, hath not this Lawgiving right. So *Jus primi occupantis*, is from the Law of Nature; but every man is not *Primus occupans*. And so the right of Primogeniture; but every man is not First-born, &c. And so Gods divine Laws in the Scriptures oblige all men alike; but yet do not they give to all men alike the right of Preaching the Gospel, Administration of Sacraments, &c. but only to such separated persons so qualified. And so Humane Laws oblige all Subjects alike; but they do not give Right or Property to all alike, but to one man, or more, excluding all other.

No Divine or Humane laws give Right or Property to any man *quod homo*, but *quod talis*.

15. That is Right or Property, which is such a mans, or mens, excluding others. That is Community, which is common to one man as much as another; as the Common Road, the Air, or Sea-water, &c.

How Community, and Right or Property differ.

## CHAP. II.

## Of Laws.

I. **A**S in all Arts and Sciences there must be some Axioms and Principles, which must prove those Arts and Sciences; and these must be first granted, and be the reason of those Arts and Sciences, and yet no reason can be given of them, before any man can deduce any thing from thence; for no mans Reason can work upon nothing: So in all just and legal actions there must always be some Law given, which is superior to the Agents reason, and the reason that such an act is just or legal; and where there is no Law, there can neither be Justice, nor transgression. It is not therefore the will or fancy of any Agent, that makes any action just or legal; but the doing of it in conformity to the precept of him who by right commands, or permits it, which makes it just and legal. *Et oportet neminem sapientiores esse legibus.* And if private mens wills, judgments, or reasons should be the rule of their actions, what one Subject is there of a thousand, that would be content with that condition wherein the Law has placed him? It is not therefore what I, or another judge fit or desire, but the directing our actions in common to the rules and precepts of our Superiors, by which we may hope to enjoy peace and unity, and be before God, Angels and Men, truly accounted just and virtuous.

Introduction.

Regula:

2. All Laws may be divided into Divine, Humane, Ecclesiastical, or Despotical.

Division of Laws.

L 2

3. AU



Divine Laws  
how manifold.

3. All Divine Laws are twofold, either Natural, engraven in the minds of all Mortal Men, whereby they are to worship one God, and by all just means to preserve peace with Men; or supernatural, viz, extraordinarily revealed by God in the Old and New Testament.

From whence  
all Divine  
Laws are de-  
rived.

4. All Divine Laws are created and derived from that divine and eternal Right, which was inseparably in God, before any such Laws were created by him.

How mani-  
fold are Hu-  
mane Laws.

5. Humane Laws are threefold, viz. Secular, Temporal, or Civil, such are the Laws of every Country; or Gamacal, viz. the Laws of the Husband; or Paternal, viz. the Laws of Parents to their Children.

From whence  
derived.

6. All Humane Laws are derived from that Right or Power which the Law of Nature creates, in supreme Powers, Husbands and Parents.

Why called  
Humane  
Laws.

7. They are called Humane Laws, because they are made by Men, who by the Law of Nature have a Right to make or create them.

From whence  
Ecclesiastical  
Laws are de-  
rived.

8. All Ecclesiastical Laws are derived from that Right or Power which by divine positive institution, our Saviour Christ left to his Church to continue untill his second coming again.

Why so  
called.

9. Ecclesiastical Laws are so called, because they only relate to the discipline of the Church, and worship and service of God.

Despotical  
Laws from  
whence deri-  
ved.

10. Despotical Laws are derived from the Right or Power, which every Master of a Family hath over his Servants; which Right or Power is created by Secular or Temporal Laws of the place where the Family is.

What must  
precede every  
Law.

11. Two things must necessarily precede every Law, or it hath no Obligation, viz. the Legislative Right, and the Declaration of it. So that *Fus divinum* is one thing, and *Lex divina* another; and *Fus naturale* is one thing, and *Lex natura* another. And so is *Fus Humanum*, and *Lex Humana*; and *Fus Ecclesiasticum*, and *Lex Ecclesiastica*. And he that will confound these things, cannot possibly ever write clearly upon the subject.

What Laws  
are vindica-  
tive.

12. Humane and Despotical Laws are vindicative, or oblige to corporal punishment in this world.

What Laws  
are distribu-  
tive.

13. Only Humane, Secular, Temporal, or Civil Laws are distributive, and create property among Men in their Estates.

What Laws  
are neither  
distributive,  
nor vindica-  
tive.

14. Neither Divine nor Ecclesiastical Laws are vindicative, but oblige in Conscience only.

\* How Men  
come to be  
punished  
Temporally,  
for not ob-  
serving Eccle-  
siastical Laws.  
a Lit. vil. fol.  
201.

15. Although Ecclesiastical Laws (as we shall prove in the next chap.) bind in Conscience only, and therefore cannot impose any Corporal mulct or punishment, yet the Secular Laws do; as if a Man be excommunicated, he shall have no advantage or relief in any plea by the Common Law; and by the Common Statute Law who so is adjudged an Heretick, or Blasphemer, shall be burnt; yet neither Common Law, nor Statute Law take cognisance of either Excommunication, Heresy, or Blasphemy, before the Statute of the 2 H. 5. 7. *In curia Christianitatis, (id est Ecclesia) in qua servantur leges Christi, cum tamen in foro Regio servantur Leges mundi*, saies *Linwood*; who saies moreover, b That the Probate of Wills and Testaments, *de consuetudine Anglie*, not *de jure communi*, belong to the Court-Christian. But whether *Linwood* saies true or not, Hen. 8. began by the Statute Law to encroach upon the Rights of the Church, and by confounding the jurisdictions both of Church and State, making himself head of both, has opened such a gap to let in all Schisme and dissention, that the

Common

b Com. Stat. de  
circumspecte  
agati.

Common-Lawyers, and Statute-Laws have upon the matter devoured all Church-rites and power; nor are either the Common or Statute-Laws now in much more esteem then the Ecclesiastical. Nor is it less then a Divine judgment upon those men, who have so extravagantly attributed both powers to be in the King, (Between *Supreme Head*, and *Supreme Governor*, I understand no difference; for if the Supreme Governor hath not supreme power or right of command, then necessarily must such a Governor be an Usurper, or unjust Invader) in words only, but indeed in their practice have denied him the exercise of the one, or the other power, and ascribed them both to themselves, and Courts subordinate to the King; That these men (I say) should be themselves, and all the Courts in as little esteem as Ecclesiastical Rites and Constitutions; and the King, God knows upon what account (for no colour of pretence was ever yet so much as reasonably pretended) violently restrained from the exercise of any either Ecclesiastical or Civil power among us.

Here do not I admit of Mr. Hobbs his division of Civil Laws into Sacred Annot. and Secular: (Did ever man before hear of Sacred Civil Laws?) "Sacred Laws are those Civil Laws (he says) which belong to Religion, that is, Cap. 14. art. 5. the Ceremonies and Service of God, and are called Ecclesiastical. Secular Laws are those (he says) which are wont to be called Civil, by a general name." For though Ecclesiastical Laws be made by Men, and therefore not Sacred, as he says; yet is the power by which they are made, from Divine positive institution, and therefore cannot have any right or power from Civil or Secular sanctions, which at highest cannot amount to more then Humane.

16. A Law differs from Counsel, as my Understanding differs from my Will: my Will is that which imperates all my actions, my Understanding informs my Will, whether the doing or not doing such an act be good or bad, just or unjust, reasonable or unreasonable. A Law is the declared will of him who by right commands: Counsel, the reason, advice or discourse of them, to whom he who by right commands, refers any thing to be debated, (who are usually called the Council) whether the willing or passing such a thing into a Law, will be probably convenient or inconvenient either to him or his Subjects.

How a Law differs from Counsel.

## CHAP. III.

## Of Virtue.

I. **T**hat Virtue is not always placed in a mean between two extremes, Introduction. and those extremes to be Vices, according to the opinion of the Virtue is not fixed always in a mean between two extremes. antient Philosophers; I do subscribe to Mr. Hobbs, cap. 3. art. 32. *de Cive*; And that from the reason he there gives, viz. that Fortitude in a good cause is a virtue, although it be in the extreme. Nor does quantity in giving, be it much, little, or indifferent, make Virtue, but the cause of giving. To these may be added Gratitude and Patience, Justice and Obedience, which are not placed between any extremes. But if I assent to Mr.

Hobbs



*Hobbs* in this, I cannot less dissent from him, where *cap. 3.* he makes Virtues to be the Laws of Nature; and *cap. 2. art. 1.* the Law of Nature to be the Dictate of Right reason. For,

What is  
Virtue.

2. Virtue is the doing or forbearing any action, as it is dictated by Right reason, from the Law of a Superior, or from some Notion known to an Intellectual creature.

How manifold  
is Virtue.

3. All Virtue is either Theological, Moral, Humane, Familistical, Personal, or Prudential.

From whence  
Theological  
virtue is de-  
rived.

4. Virtue being by the definition, the Dictate of Right reason from some superior cause or notion; Theological virtue is a Dictate of Right reason, from some revelation of God in the Scriptures, which otherwise had been impossible for any man by the light of humane nature to have attained to. By Theological virtues I do not mean only those three most eminent virtues of Faith, Hope, and Charity, but all those actions of obedience due to them who have oversight of me in the Lord, as a Christian; and to whom I owe my obedience not by any Law of Nature, but as commanded by God in the Scriptures.

What are  
Moral vir-  
tues, and from  
whence de-  
rived.

5. Moral Virtues are those Dictates of Right reason which flow from that light of Nature, engraven in the minds of Men, for the conservation of peace and society among Men, so long as they live in this world.

What are Hu-  
mane virtues,  
and from  
whence  
caused.

6. Humane Virtues are those Dictates of Right reason, by which Subjects, Wives and Children, conform their actions to the Laws or Precepts of Supreme powers, Husbands and Parents.

What are Fa-  
milistical vir-  
tues.

7. Familistical Virtues, are those actions of Servants done in conformity to the commands of the Masters of Families.

What are  
Personal  
virtues.

8. Personal Virtues, are those actions (which are dictated to divers men from principles of innate good nature) of Temperance, Continency, Patience, Liberality and Frugality; whose contrary extremes are vices and sins.

What are  
Prudential  
virtues, and  
from whence  
derived.

9. Prudential Virtues are not dictated from any Divine or Humane Laws; but from some Principles known to the understanding (which are more or less, as men are more or less intelligible) whereby some Princes govern more prudently than others, and some Masters of families govern their servants more prudently than others. And these Virtues have not reference only to the government of Men, but to other actions; as Prudence in managing of an Estate, is a Virtue; or in mens governing their actions, so that they are esteemed, and not despised by other men, are Virtues: yet these actions are no where commanded, or forbidden by any Divine or Humane Laws. These Virtues are always placed in Empire, not in Obedience.

The *ratio fi-*  
*nalis* of all  
virtues, and  
how they dif-  
fer. First of  
Theological  
virtues.

10. God having made Man a rational creature, and endued him with an immortal Soul, capable of eternal happiness, hath revealed himself supernaturally in the Scriptures to Men as reasonable creatures; so that they directing their actions conformable to his precepts therein contained, might by faith or believing on him hope for eternal happiness.

The end of  
Morality.

11. The end of all Moral Virtue is, that men may preserve peace and society, so long as they live in this world: And God hath made Man a sociable creature, as well as intellectual and rational; and therefore hath engraven these eternal and immutable Laws of Nature in the minds of all mortal men, that by conforming their actions thereunto, they might pre-serve

serve peace and society with men. And though these of themselves are not sufficient to pully man up to eternal happiness; yet let no man hope, that despising these Laws of the great God of Nature, upon a pretended Faith he shall ever attain it.

12. But because the Law of Nature does oftentimes command *in Thesi* only, and Humane Laws *ex Hypothesi*: as, *Thou shalt not steal, and shalt give every man his due*, is from the Law of Nature; but that this thing is mine, and that thing another mans, is by positive Humane laws. So though Moral virtues be always the same, yet Humane virtues differ, accordingly as Laws in divers places are different. Thus it is a Moral virtue in Wives and Children, to honor and obey their Husbands and Parents; but as a Humane virtue, the doing of such a thing may be Virtue at one time, and Vice at another, as it is commanded or forbidden by the Husband or Parents. So that Humane virtues in Subjects, Wives and Children, are necessary to the conservation of society, where the laws or principles of such actions are not plainly repugnant to Divine laws.

The end of humane virtue.

13. The end of all Familistical virtue is, that Servants by all just and lawful means intend the good of their Masters, and make no dissentions or discontents in their Families.

The end of Familistical virtues.

14. God having made man after his own image, as well in body as in soul; (for, *He that sheds mans blood, by man shall his blood be shed, for in the image of God made he man*;) It is not therefore to be expected that any man should, without sin against God, abuse the highest and noblest part of Gods creation. All men therefore, in the first place, ought by all just and lawful means to do well to themselves, and not by any excess or intemperance to abuse that body which God hath made in his own image.

The end of Personal virtues.

15. Theological virtues relate to the attaining of Eternal happiness: Moral, Humane, and Familistical, to the conservation of society and peace in their several places: Personal virtues, to the preservation of that body which God hath entrusted every man with keeping so long as he lives. We have spoken of the end and difference of Prudential virtues,

The difference between Theological, Moral, Humane, Familistical, and Personal virtues.

Parag. 9.

16. In all prudent and profitable actions, *Prudentis est fortunam semper in concilio adhibere*: But that man who directs his just and moral actions to Fortune, or the time and tide of mens affections, shall soon be accounted a Weathercock and Time-server. In all prudent actions or virtues, there is no other obligation or penalty, more then the reward or profit of the action, and loss for the folly of imprudent actions: But in just and moral actions, men must consider their duties, not profit; and are obliged to them, notwithstanding temporal loss or trouble.

Whether just and moral actions or virtues are to be enquired into by fortune, as are Prudential?



## CHAP. IV.

## Of Particular Moral Virtues.

Religion is  
the first and  
chief of Moral  
Virtues.

1. **S**ince that the Law of Nature is, That there is one God infinitely good to be worshipped and served, and that all men should in their several stations endeavor by all just and lawful means to preserve Peace and Society in this World; Then is Religion or the Publick Worship and Service of a Deity the first and chief of all Moral Virtues; and so conspicuous was this Virtue in all ages and places to good men, by the Light of Nature onely, that it was always their first care to be in a Society of Men where God (however misplaced in an *Oak, Osiris, Iris, Jupiter, Apollo, &c.*) was publickly worshipped and served. And men who were of no Religion, were always stigmatized with the most opprobrious name of Atheists, as the most vile of Men. \* *Numa Pompilius* therefore in the first place took care for the institution of a Religion among the *Romans*, and to this end he created a Priest who should daily offer Sacrifice to *Jupiter*. And so zealous were the \* *Druides* (in the old age of our Ancestors, before Christianity was planted among us) in their Religion or Publick Forms of Worshipping of God, that none but the Priests and Schollars might learn them; nor would they commit them to Letters, both because they would not have them divulged, least they should grow contemptible by being exposed to the view of the rude and ignorant multitude; as also that their Schollars might the better retain them in their memory. \* *Nicias* as the chief Argument of his justification, and hope of belief from the gods in his greatest adversity, says, *Πολλά μὲν ἐς θεῶν νομήναι δεινότητι*, I have worshipped the gods frequently according to Law. And heretofore in the Church of *England*, set Forms of Prayers were not onely ordained, that her sons of her Religion, might meet at publick times to worship and serve God; but the Minister or Priest was obliged every day to offer up the publick worship and service of God, whether there were any present but himself, or not, for all sorts of men in their several vocations and stations: That as the fire upon the Altar among the Jews might never go out, so among us Christians might no day pass, wherein the Publick Service of God was not offered up for all sorts of men.

2. That Men honor and obey their Superiors, Subjects their Sovereigns, Children their Parents, Servants their Masters.

3. That Men be not Tale-bearers or Back-biters, but avoid evil communication.

4. That Men do not make advantage of anothers weakness to his damage.

5. That Man in all things keep his Integrity; that is, not to answer so to another, as to deceive him by equivocation or mental reservation; if it does not appear, that there is evil intent in the question.

6. That Men perform their promise made, although it be to their hinderance.

7. That

\* *Flaminem  
assiduum Jovi  
Sacerdotalem  
creavit. Liv.  
lib. 1.*

\* *Selden: An-  
nal: Angl.  
lib. 1. c. 4.  
Cæsar de Bell.  
Gal. lib. 6.  
Gamb. Brit.  
p. 12.*

\* *Nicias Orat.  
Thucid. lib. 7.*

Integrity.

Promise.

7. That Men bear a grateful minde for benefits received, that is, that they do not suffer him from whom they receive a benefit, to be in a worse condition then he was before he conferred it: And if they have not in their power wherewith to satisfie, yet that they bear it so in their mindes, as to be ready to satisfie to their power. Some Creatures who are not endued with Reason, do imitate this Virtue; the *Storks* when their Parents are *wiete* and broken with age, do relieve them by feeding and providing for them; wherefore the *Greeks* called the *Stork* ἀντιπαράργον, *Beneficiorum retributorem*. See *Grotius* Annotations upon his Preface *De Jure Belli & Pac.*

8. That men do well to their Wives, Children, and others, as by nature and affinity allied unto them.

9. That men be merciful; wherein men ought not so much to observe the *quantum*, as the cause of shewing mercy or pitty.

10. That in revenge men do not respect the evil past, but minde the future good which may happen from the punishment.

11. That they neither by deeds, words, or countenance, use another contumeliously.

12. That they be not high-minded or over-conceited of their birth, person, or parts.

13. That they be lowly minded and modest.

14. Not to accept or respect persons in judgment.

15. Where no Law gives propriety, there ought community to be.

16. Those things which can neither be divided or used in common, that the decision be by lot.

17. That the first-born be preferred, and the Male before the Female.

18. \* That no man endeavor to transfer or alien, by Pact or Promise, that right which God by the Law of Nature or Divine Institution hath given him.

19. That Protection be granted to Ambassadors and Mediators of Peace.

20. That no man seek private Revenge for any supposed Injury.

21. That Judgment be pronounced without hope of reward, or for applause of men.

22. That where Evidence of Fact does not clearly appear, that they take information from Witnesses.

23. That the Judge be indifferent, not byassed to either party, either by Natural relations, or by any precedent Obligation.

24. These Moral Virtues are commanded by the Moral Law, and are most truly and properly so, as they are revealed and declared to mankind by God in the holy Scriptures: For the Will of God commanding in the Scriptures (that is, in the Old and New Testament) is in all things by highest right to be obeyed and followed. And because God hath created man with an immortal and eternal Soul, and does not will the death, that is, the eternal death of a sinner; he offers every man grace (who does not refuse it by preferring some other things) to lay hold of those means which he hath revealed in them, for the obtaining of his eternal happiness.

25. But because a man cannot well bear all these Virtues in his minde, in every action which a man intends, if he would know whether it be against the Law of Nature or not: Let him suppose himself in place of him with whom he intends this action, and if he be not willing that this thing should be done to him; let him not do it to another, for upon this short and easie rule, *Whatsoever ye would that men should do unto you, do ye even so unto them, depends all the Law and the Prophets.* Matth. 7. 12.

\* That no man endeavor, &c. For that which is any mans by Divine Institution, cannot be aliened neither by his will nor the will of all the men in the world; and therefore cannot Episcopacy or Priesthood after Consecration and Imposition of hands be transferred, because they are by Divine Institution: Yet whatsoever Bishop or Priest shall endeavor for reward or price to alien it, or deny it for safety of his life, may as well be esteemed a prophane person as *Esau* was.

The sum or cause of all Moral Virtues contained in the Second Table.



## CHAP. V.

## Moral Virtues are commanded by God in the holy Scripture.

Religion or the worshiping of God in a Publick set form, was instituted by God under the old and new Testament.

1. **T**He Lord said, Speak unto Aaron and unto his sons, saying, On this wise shall ye bless the children of Israel, saying unto them, The Lord bless thee, and keep thee: The Lord make his face shine upon thee, and be gracious unto thee; The Lord lift up his countenance upon thee, and give thee peace. And they shall put my name upon the children of Israel, and I will bless them, Numb. 6. 22, 23, 24. &c. and on this manner pray ye: our Father which art in Heaven &c. Math. 6. 9. &c. And the Apostle, 2 Tim. exhorts that First of all prayers and supplications (because there can be no Religion without it) be made for all Men, especially for Kings, &c. And that the end of it is Religion, or the uniting or binding Men to a publick and formal worship of God, is plain by the Apostle himself. Where he saies, That men may with one mind and one mouth glorify God. Rom. 6. 15.

That men honor and obey their superiors.

2. I counsel thee to keep the kings commandment, and that in regard of the oath of God. Eccles. 8. 2. Feare God, Honor the King, 1 Pet. 2. 17. The feare of a King is as the roaring of a Lyon, and who so provoketh him sins against his own soule. Prov. 20. 2. Honor thy Father and thy Mother, Exod. 20. 12. He that curseth Father or Mother shall surely be put to death, Exod. 21. 15. Servants be obedient to them that are your Masters, Ephes. 6. 5. Let as many servants as are under the yoke, count their masters worthy of all honor.

That men be nor Tale-bearers.

3. Speak not evil of another, hee that speaketh evil of his brother, and judgeth his brother, speaketh evil of the law, and judgeth the law: Ja. 4. 11. Let no corrupt communication proceed out of your mouth, but that which is good, Ephes. 4. 29. The words of a talebearer are as wounds, and they go down into the innermost parts of the belly. Prov. 18. 8. When David asketh the Lord the question, Who shall abide in his Tabernacle, Psal. 15. 1. He answereth ver. 3. He that backbiteth not with his tongue, nor doth evil to his neighbour, nor taketh up a reproach against his neighbour.

Not to defraud.

4. Oppress not the widow nor the fatherless, the stranger nor the poor. Zach. 7. 10.

Integrity.

5. Lord who shall dwell in thy Tabernacle? who shall dwell in the holy hill? He that walketh uprightly, and worketh righteousness, and speaketh the truth from his heart, Psal. 15. 1, 2. He that walketh righteously and speaketh uprightly &c. shall dwell on high. Isa. 33. 15, 16.

To keep Promises.

6. That which is gone out of thy lips thou shalt keep and performe. Deut. 23. 23.

Gratitude.

7. Withhold not good from whom it is due, when it is in the power of thy hand to do it. Prov. 3. 27. And what can man give back again to God, for all the benefits he hath done for him. Psal. 116. 11.

To do well to them.

8. Fathers provoke not your children to wrath, but bring them up in the nurture and admonition of the Lord, Ephes. 6. 4. Husbands love your wives, even as Christ loved the Church, and gave himself for it. Ephes. 5. 25.

9. Whoso-

9. Whosoever shall give you a cup of cold water to drink in my name, because ye belong to Christ; verily I say unto you, he shall not lose his reward. Mark 9. 41. Blessed are the merciful, for they shall obtain mercy, St. Matth. 5. 7.
10. Thou shalt not avenge, nor beare any grudge against the children of thy people. Levit. 29. 18. Mercy. Revenge.
11. I say unto you, whosoever is angry with his brother without cause, shall be in danger of judgment, and whosoever shall say unto his brother Racha, shall be in danger of the council; but whosoever shall say unto his brother thou fool, shall be in danger of hell fire, Matth. 5. 19. He that uttereth a slander is a fool, Pro. 10. 18. A soft answer turneth away wrath, Prov. 14. 21. Contumacy.
12. Everyone that is proud in heart, is an abomination to the Lord. Pro. 16. 5. There be six things which the Lord doth hate, yea, seven are an abomination unto him, a proud look, &c. Pro. 6. 16, 17. Pride.
13. Blessed are the poore in spirit: for theirs is the kingdom of heaven. Math. 5. 3. With the lowly there is wisdom. Pro. 11. 2. Thou shalt love thy neighbour as thy self. Levit. 19. 18. Whosoever will be great among you, let him be your minister, and whosoever will be chief among you, let him be your servant, even as the sonne of man came not to be ministred to, but to minister and give his life a ranfome for many. Matth. 20. 26, 27, 28. Modesty.
14. Of a truth I perceive that God is no acceptor of persons. Act. 10. 34. There is no iniquity with God nor acceptation of persons. Chro. 19. Not accepting of persons.
15. Common waies; acceſſion to Maritime places. St. August. lib. 4. quest. 44. upon the book of Numb. affirms, The Children of Israel had just cause of war against the Edomites, Numb. 20. 18. because Edom would not let them passe by the kings highway. What things ought to be common.
16. And they gave forth their lots, and the lot fell upon Matthias, and he was numbred among the Apostles. Act. 1. 26. The lot is cast into the lap, but the whole disposing is of the Lord. Prov. 16. 33. Deciſion by Lot.
17. This is so evident, as whereſoever God did not interpoſe, in holy writ the first borne male was alwaies preferred. And from the authority of the Apostle. 1. Tim. 2. 23. Adam was first formed, then Eve; wherefore Adam had the dominion. & jura sanguinis nullo jure civili dirimi poſſunt. Primogeniture.
18. God pronounced Eſau a deſpiſer of his birthright. Gen. 25. 34. Because he to ſave his life, ſold his birthright; and Hebr. 12. 16. a prophane perſon. Not endeavor to alien what they claim by divine Law.
19. David had a juſt cauſe of war againſt Hanun for his evil intreating of his Embaſſadors. 1. Sam. c. 10. Protection to Embaſſadors.
20. Revenge is mine, I will repay it ſaies the Lord. Ro. 12. 29. Revenge.
21. And thou ſhalt take no gift: for the gift blindeth the wiſe, and perverteth the words of the righteous. Exod. 23. 8. No reward for judgement.
22. At the mouth of two witneſſes or three witneſſes, ſhall he that is worthy of death be put to death. Deut. 17. 6. But if he will not heare thee, then take with thee one or two more, that in the mouth of two or three witneſſes every word may be eſta bliſhed. Matth. 18. 16. Witneſſes.
23. Thou ſhalt not wreſt judgement, thou ſhalt not reſpect perſons, neither take a gift. Deut. 16. 19. Indifferent Judges.
24. It is eaſier for heaven and earth to paſſe, then one title of the law to faile. Luke 16. 17. Thy word is true from the beginning, and every of thy judgments endureth for ever. Ps. 119. 160. Yet God may alter his judgments when he pleaſes, as Gods judgement pronounced againſt Nineveh, Yet within forty daies Divine Laws are immutable, unleſs by God himſelf.



and Nineveh shall be destroyed. *Jos. 3. 4.* was changed by God, *cap. 4. 11.* It was accounted Abrahams faith, *St. James 2. 23.* That he would have offered up Isaac, though by the law of nature Abraham should have preserved his sonne; and so God ceased the motion of the Sun and Moon upon Joshua's prayer, *Jos. 10. 12.* And caused the same to go retrograde ten degrees upon the prayer of Hezekias and Isaiah, *2 Kings 20. 11.* It is true, that nothing less then that power which made a Law, can alter it; the Laws therefore of God whether positive or natural, have an eternal and immutable obligation upon all the men in the world; but whatsoever power may make a Law, that power may alter it: Divine Laws therefore whether positive or natural cannot have any obligation upon God, but he may alter them when he pleases.

## CHAP. VI.

### The Obligation of Divine and Humane Laws upon the Consciences and Persons of Men.

Conscience.

I. **C**onscience comes of *con* and *scio*, to know together with reason, or some law. *Conscientia est animi quaedam ratio & lex, quæ de recte factis, & secus admonemur:* Conscience is a certain reason or law of the Mind, whereby we are well or ill advised of our deeds. The laws therefore of Man may not only be violated by doing contrary to them, but by consenting to them: As he which does contrary to that he thinks, though the doing of the thing be just, yet 'tis unjustly done by him; for, *whatsoever is not of faith, is sin*, *Rom. 14. 23.*

The obligation of the laws of God.

2. The affirmative precepts of God, they do *semper obligare*, yet they do not oblige *ad semper*: As when he commands us to *pray continually*, it is not to be expected a man should be always in the act of prayer; but so to live, as he does nothing which may indispose him from praying. But Gods negative precepts do not only always oblige, but oblige *ad semper* too; for there is no time at all wherein it is lawful for a man to *kill*, to *steal*, to *commit adultery*, &c. *Deut. 5. 17, 18, 19, 20, 21.* negative in all instances.

Ecclesiastical laws oblige in conscience.

3. Ecclesiastical laws do oblige in Conscience. *If thy brother shall neglect to hear thee, tell it to the Church; but if he neglect to hear the Church, let him be to thee as a heathen man or Publican*, *Mat. 18. 17.* And the Scribes and Pharises sit in Moses chair; all therefore whatsoever they bid you, observe and do; but do not after their works, for they say and do not, *Mat. 23. 2, 3.* If then by the law of our Saviour, the Jews were to observe and do whatsoever the Scribes and Pharises commanded them, because they sate in Moses seat; sure with as much, or much more reason ought Christians to observe and do whatsoever the Church, which our Saviour Christ himself hath planted, doth command them.

In conscience only.

4. *My kingdom is not of this world*, *Joh. 18. 36.* God sent not his Son into the world to judge the world, but that by him he might save the world, *Joh. 3. 17.* And, *O man, who has made me a Judge or divider amongst you?*

If

If then our Saviours kingdom were not of this world; if God sent not his Son to judge the world, and if our Saviour were not a Judge among men; then cannot the Church of Christ have any power from Christ in the kingdoms of the world, nor to judge the world, nor to be a Judge or divider among men.

5. Ecclesiastical laws, according to the usage and custom of *England*, relate to Blasphemy, Apostacie from Christianity, Heresies, Schisms, Holy Orders, Admissions, Institution of Clerks, Celebration of Divine Service, Rights of Matrimony, Divorces, general Bastardy, Subtraction, and Right of Tythes, Oblations, Obventions, Dilapidations, Excommunication, Reparation of Churches, Probate of Testaments, Administrations and Accounts upon the same, Simony, Incests, Fornications, Adulteries, Solicitation of Chastity, Pensions, Procurations, Appeals in Ecclesiastical cases, Commutation of Penance, which are determined by Ecclesiastical Judges.

To what things Ecclesiastical laws have reference.

6. So that there is a mixt Conuance in the Ecclesiastical Judicature, *viz.* of things meerly Spiritual, by which they are impowered to judge and take conuance of, and that by no humane power, but only as they are impowered and sent by our Saviour, and are only his Ministers, *viz.* the taking conuance of Blasphemy, Excommunication, Heresie, Holy Orders, Celebration of Divine Service, &c. And this Ghostly power the Church and Ecclesiastical persons had, before ever Temporal powers received the Gospel of Christ, or were converted to Christianity. And also after it pleased God that Nations and Kingdoms were converted to Christianity, and that Kings did become nursing fathers, and Queens nursing mothers to Gods Church; then did Kings cherish and defend Gods Church, and endued it with many Priviledges and Immunities, which ere while was persecuted by them, or other Powers; but yet could not these Immunities or Priviledges divest them of that Ghostly power which our Saviour by divine institution gave his Church. It is true, no question but that originally not only all Bishopricks, and their bounds, and the division of all Parishes, and the conuance the Church hath of Tythes, of Probate of Wills, of granting of Letters of Administration, and Accounts upon the same, the right of Institution and Induction, and the erection of all Ecclesiastical Courts, &c. were all originally of the Kings foundation and donation; and that to him only, by all divine and humane laws, belongs the care and preservation of all his Subjects, none excepted, in all causes: And therefore not only all those things which relate to the extern peace and quiet of the Church, although exercised by Ecclesiastical persons, but all those priviledges and immunities which the Church or Churchmen have in a Church planted, which the Primitive Christians and Apostles had not, in the persecution of the Church when planting, are originally Grants of Kings and Supreme Powers, and so Temporal or Secular Laws; but in regard they accidentally have reference to the Church, and are exercised by Ecclesiastical persons, they are not improperly called the Kings Ecclesiastical Laws. And sure either ignorance of this, or faction, hath made men run into two contrary extremes: one, That Kings have no right to their Crowns, but *in ordine ad bonum spirituale*, and so cannot be Kings: or, That all power and jurisdiction in all causes is from the King; and so cannot there be any such thing as Christian faith, Religion, or any Ghostly

All things determinable by Ecclesiastical Judges, are not meerly spiritual.

*Isa. 49. 23.*

power



power left by our Saviour with his Church, to continue to the end of the world; which every Christian man *de fide* ought to believe, and submit to, before any Temporal Law or Power in the world.

Object.

*But because Ecclesiastical laws have not infallibility affixed to them, if they command any thing repugnant to Divine laws, do they then oblige?*

Answer.

No, for God ought to be obeyed before Man; nay if any man in his conscience believes that they do repugn Gods law (whereas they do not) in that thing he ought not to submit to them. But let that man have a care that he have not the spirit of pride in him, which he pretends to be Conscience; for an evil Conscience shall never justify any man for his disobedience; nor shall ever any mans hating of Idols, excuse his committing of Sacrilege. And let no man hope that his fancying some errors in a Church, does give him a liberty of putting himself out of the communion and society of the Church, and setting up of himself in stead of it. No Christian man can hope for salvation, but as he is a Member of Christs Church; nor ought any Christian man to hope, that any Heathen man can be saved in the ordinary way of salvation; *For there is no name under heaven by which a man can be saved, but only by the name of Jesus: And, He that obeys not the Church, is to be accounted as a Heathen man, S. Mar. 18. 17.*

The obligation of temporal Laws.

7. Temporal or Secular laws oblige not only in Conscience, but also to temporal punishments. That they inflict temporal punishments, is evident every where in the world, as well for spiritual, as temporal crimes. Thus did *Phineas* turn away Gods wrath from the children of Israel, *Numb. 25. 11.* So did *Joshuah* for *Achans* sacrilege, (that is, stealing or converting to common or prophane uses, what is dedicated and offered up to God) atone and pacify Gods wrath by stoning *Achan* to death. *Jos. 7.* So did *Solomon* put *Shimei* to death by *Dauids* will, because he cursed Gods Anointed and his Sovereign, which was a spiritual crime. And God commands the temporal powers not to suffer a Witch to live, and Witchcraft is a spiritual crime. And that temporal laws do oblige as well in conscience, as inflict corporal pecuniary mulcts, is evident *Rom. 13. 5. Wherefore ye must needs be subject not only for wrath, but also for conscience sake.* And the subjection that the Apostle there speaks of, is to temporal powers.

Object.

*But God has ordained temporal powers for the preservation of peace; what if they command things which do not conduce to the preservation of peace among men, ought they to be obeyed by them who are in subjection to them, or not?*

Answer.

I answer, The question is absurd, for the temporal commands or laws cannot hinder peace among men, but the disobedience to them is that which hinders peace among men. Charity is the chiefest Theological Virtue, and preferred before Faith, or Hope, *Charity beleeveeth all things. 1 Cor. 13.* And how can I be a Charitable man, and not beleeve that supreme powers (assisted by the best qualified men who make it their whole employment) see and understand more, that such a law is for the good and peace of the governed, then I who am not versed in those things, nor do understand from what reasons and grounds this thing became a law? But who is he that disputes his obedience, and speaks evil of dignities? No man that is a private man, that judges another, but condemns himself. *Ro. 2. 1. And speak not evil one of another; he that speaketh evil of his brother, and judgeth his brother, speaketh evil of the law, and judgeth the law; but if thou judge the law, thou art not a doer of the law but a judge, Jam. 4. 11.*

8. Temporal

8. Temporal Laws oblige the Conscience when they command nothing contrary to the Law of God, nor his Church: when they command any thing contrary to the Law of God, and impose a penalty for not observance, Men must submit to the penalty, but obey God, *For whose loses his life for my sake, and the gospels, shall find it. St. Mar. 8. 35.*

When Temporal Laws oblige the Conscience.

9. Temporal Laws oblige not in Conscience when they command contrary to Ecclesiastical; for spiritual peace is to be preferred before worldly, the good of the soule before that of the body; *First seek the kingdome of heaven and the righteousness thereof. St. Mat. 6. 33.*

Ecclesiastical Laws oblige in Conscience before Temporal.

## CHAP. VII.

### Of Promises, Contracts, &c.

1. **A** Promise is the giving of a Mans Faith unto another, that he will do or give, or not do or give such a thing, *fidem do me daturum vel prestiturum, aut non; or dabo, or faciam, or non dabo or faciam,* is a promise, and to the performance of his promise is every Man obliged by the Law of Nature.

A Promise.

*But when the Declaration of my will does not evade into Faith given, my will being free continues free, after such declaration, as well as before. As if I say, volo dare vel facere, I will or intend to do or give such a thing, yet when I will I may will to do such a thing, and therefore if a Man make twenty Wills, yet when he will, he may unwill them all. So if a Man upon things appearing reasonable, does will to give or do any thing, yet if upon discourse or reasoning it shall appear that the giving or doing such a thing will not have such an event as he proposed, he may choose whether he will give or do that thing: nay, if he be convinced that the doing of such an act, will not have such an effect as he proposed, and shall notwithstanding do it, this is the act of a wilful and not a prudent Man.*

Annot.

2. A Vow is when one plights his Faith to God, that he will give to God, or a Creature such a thing. All Promises and Vowes are either made by words in the future tense, as *dabo, or faciam*: or by words in the present tense, as *fidem do*; but then the *habendum, prestandum* or *faciendum*; is alwaies in the future tense, as *fidem do me daturum vel facturum*,

A Vow.

3. A Contract or Pact is the conditional act of two or more mutually promising one another to give one another something in exchange, or when two or more mutually promise one another, that if one will do or give such a thing, that then the other will do or give such a thing, upon the doing or giving of one part, the other is by Law obliged to performe his promise: or upon the giving or receiving any part of what is contracted for, both parties are obliged to performe their contract: As if I contract with another to give him ten pounds for a horse, and give him six pence, or more or less (this being an outward expresse sign of the contract) both parties are obliged, the one to pay the residue of the mony, and the other to deliver the horse: or upon the payment, or delivery of the horse by one

A Contract or Pact.



one party, the Law obligeth the other to the performance of his promise. So if I promise another to give him five shillings, &c. to do such a thing for my self or for another, if the other accepts of any thing in acknowledgement that he will do that thing, both parties are obliged by the Law; or upon the giving or doing of one party, the Law obligeth the other.

Wherein a  
bare promise  
and a Con-  
tract differ.

4. Absolute promises receive their obligation from a precedent, or present consideration or condition; as if for a benefit received, or any present consideration, I promise, &c. Contracts from a subsequent, as if I promise to another, that if he will do for, or give me or another, such a thing, that then I will do for him or give him such a thing; this being a conditional promise or contract, upon the performance of the others consideration or conditions, being subsequent to my promise, I am obliged by Law to performe my promise made to him, and therefore *ex nudo pacto non oritur actio*, for I am not obliged by any act of the other to performe any thing. All contracts are made by words of the future tense, as *si aliquis dederit aut fecerit, dabo aut faciam*.

Wherein a  
Contract  
differs from  
a single obli-  
gation.

5. A contract differs from a meere obligation in this; a single obligation is, when one or more for such a sum of Money, Lands, Houses, &c. had and received from another, acknowledgeth him or themselves liable to such a penalty to the other, if they perform not such a condition as is specified in the obligation. A Contract or Pact is, when both or all parts are obliged to performe.

Annotat.

*All Promises, Vows, Contracts, and Obligations, ought to be only of things in possession, and that are mens so, as by an act of their wills they may be anothers, as they are theirs: and therefore where any man hath a meere right to any thing (this being a shadow (another having the substance) or as our Lawyers say, A chose in Action) he cannot by any Contract or otherwise alien his right to another, but he can only release it to him in possession; otherwise the right remains still in him, notwithstanding any Contract; &c. that he would alien it. And I would gladly be satisfied how Mr. Hobbs in the generation of his Civitas. can make meere rights to be transferred and aliened by the Pacts of men; and those natural rights too: This being granted, Mr. Hobbs may by his Contract with another Man, make himself no Man, but a Horse or an Asse, notwithstanding that by nature he is a Man.*

What is an  
Oath.

6. Every Oath is either a calling God to witness, that what a Man testifies is true or false; or else a speech added to a promise, whereby the promiser does renounce Gods mercy, if he performs not what he promises. But if a Man Promises, Vows, Contracts, or swears to do any thing which is unlawful, he ought not to performe it; for it is ill done to promise, &c. but worse to do any thing unlawful.

Forasmuch how  
different from  
a Pact.

7. A League is, when two or more do mutually give their faith to observe such conditions as are agreed between them, and herein it differs from a Pact or Contract. A Contract or Pact is, when there is a precedent humane Law, obliging the parties contracting to performe all the conditions specified in the contract; A league is, where there is no humane Law obliging but only the Law of Nature. And therefore all stipulations made by Princes one with another, are confederacies or leagues, not Contracts or Pacts, because there is no precedent humane Law, obliging them to performe their leagues.

Donum.

8. A Gift is, what I do give to another, so as it is mine, *do*; and though

though a gift be alwaies in the present or preterperfect tense, yet the *Habendum* may be in the future; as if I make a lease freehold, or create a State in taile to one, and grant the reversion to another and his heires, here though the deed or gift be in the present tense, yet the reversion or *Habendum* is in the future. But no Man can give another any thing, but what depends upon his will, and is his so, by some positive humane law, that by his giving he may so make it anothers. For whatsoever is mine by the Law of Nature, cannot be aliened or made anothers by my Will, nor by the Will of all the Men in the world; for it is impossible, natural causes and relations should be dissolved by Mans Will.

9. Feoffment is derived of *feodum* a Fee, *quia est donatio feodi*, and this is the most ancient and necessary Conveyance which is used by the Common Law (that is that Law which concerns tenures and estates, used only here in *England*) and this deed or conveyance is either of absolute estates of corporeal inheritances, absolutely passed to another by livery and seisin, made according to the intent and purport of such Feoffment (he which conveys such estate of inheritance being called the Feoffor, he to whom such inheritance is conveyed, is called the Feoffee) or of absolute estates of inheritance which are not corporeal, as Advowsons, Commons, rents issuing out of lands which do lye in grant, and do not pass by livery and seisin, but by delivery of the deed or feoffment. A Feoffment.

10. *Do* (or *dedi*, as our Lawyers say, which implies a warranty) to *A*, and his heirs for ever, makes a Feoffment: *Do* or *Dedi*, to *A*. and the heires of his body lawfully begotten, or to *A*. and the heires male or female of his body lawfully begotten; or to *A*. and the heirs male or female on the body of such a Woman, or to a Woman and the Heirs of her body lawfully begotten, or heirs male or female of her body lawfully begotten by such a man, creates a state taile; and he which creates such an estate is called Donor, he to whom such estate is granted, Donee. Estates-Taile.

11. *Do* or *Dedi* to such a man or woman for term of either of their lives, or to such a man or woman during the life of another, creates a freehold. Freehold.

12. *Do* or *Dedi*, or *concedo* or *concessi*, to such a man if he shall live so long, an estate for years, or to such a man and his heirs for such a term, reserving, or not reserving such a rent or service, creates a lease; In both the latter he who gives is called Lessor, he who takes, Lessee; and humane Laws oblige as well to gifts as contracts. For natural Laws oblige in conscience only, but men are obliged by mulcts and corporal punishments to contracts and gifts. So that in most proper speaking, In every gift it is the Law which gives the property to another by an act of the Donors will, and the Donor is the instrument by which the Law conveys the property of any gift to another. Lease.

13. Humane Laws therefore obliging men to the performance of their Pacts, Contracts, and Gifts, it is impossible they should receive their origination and first power from the Pacts and Contracts of Men: For where there is no precedent humane Law obliging, men can neither make Pacts, Contracts, or Gifts, nor have any thing to give and contract for. And to suppose that humane laws must precede and oblige men to their Contracts and Pacts, and that Contracts and Pacts must precede humane laws and give them their power, is most manifestly absurd and contradictory. No Law or Legislative Right arises from any Pact or Contract.



## THE CONTENTS of the Second Book.

- Chap. I. **H**aving thus far treated of Rights and Laws, which are the prime and efficient cause of all Humane, Christian, and Legal Society; We in the first Chapter of this Book proceed to declare the Causes of all Society.
- Chap. II. This Chap. shews the cause and end of Regal power.
- Chap. III. Declares the attributes of it, and incidently the causes of Magistrates power.
- Chap. IV. Compares the three species of Government, viz. Monarchy, Democracy, and Aristocracy; wherein the excellency of Monarchy appears above either of the other, as well by reason and experience, as by the institution of God, and consent of the world.
- Chap. V. Shews the internal causes disposing men to sedition, as well from the Party governing, as from the Subjects or party governed.
- Chap. VI. Declares the causes and attributes of the Fathers power. And
- Chap. VII. The causes and attributes of the Husbands power. In this Chap. is demonstrated, that though the Fathers and Husbands power be from the Law of Nature, yet may the exercise of them be restrained by the Supreme power of any place, without any wrong or prejudice to them; which could not be done without a violence upon the Law of Nature, if the Fathers and Husbands power were an institution of God, and Supreme powers an institution of Man.
- Chap. VIII. Contains the causes and attributes of Despotical, or the Masters power; wherein is declared, that if it be impossible for any man to make another his Master, then necessarily is it impossible any man should make another his Prince or Sovereign.
- Chap. IX. Treats of the causes and attributes of Ecclesiastical power.

## DEFINITIONS.

What is Society.

How manifold is the Society of Men.

1. **S**ociety, Aristotle in lib. 1. Pol. cap. 5. truly defines to be made up of many divided parts or persons; so that there must necessarily be *Unum quid quod impareret, alterum quod pareat.*
2. There are six sorts of Society. First, of Supreme powers and Subjects. Secondly, of Magistrates and those committed to their care or government; and this is most properly called the *Civitas*, especially where the Magistrates and those in their jurisdiction have a privileged or exempted authority peculiar to them, and not the same with that which is not contained in their jurisdiction. Such are the Societies of our *Civitates*, Boroughs and Corporations in England, where the Magistrates jurisdiction is exempt and privileged from the ordinary jurisdiction of Magistrates, where these privileges and immunities are not. Thirdly, of Husband and Wife; and this Society the Greeks called *Gamaca*. Fourthly, of Fathers and Children, which is called *Patrica*. Fifthly, of Masters and

and Servants, which is called Despotica. Besides these, there is a sixth Society, which is proper only to Christians, viz. of Bishops, Curates, and Congregations committed to their charge.

3. *Potestas est jus imperiale in aliqua persona, cujus præceptum continet rationem obedientiæ.* What is power.

4. *There are four kinds of Powers, viz. Divine, Humane or Natural, Legal and Ecclesiastical.* How many kinds of powers are there.

5. *Divine power, or right of Command, is that power which is by highest right solely and originally in God, and incommunicable to any Creature, from whence all other Powers are mediately or immediately derived.* What is Divine power.

6. *Humane power is a right of Command, created immediately by God, or immediately derived from the Law of Nature.* What is Humane power.

7. *Legal power is a right of Command, which is not immediately derived from any positive or natural law of God, but from some Humane law.* What is Legal power.

8. *Ecclesiastical power is an institution of our Saviour, and left to continue in the Church of Christ, until his second coming to Judgment.* What is Ecclesiastical power.

9. *Force or Tyranny, is an usurpation of Command of any Creature, or company of Creatures, not created by any law of God or Man. Nor is it the commanding of one alone, which makes Tyranny: the very Grecians could account the Athenian Thirty to be Tyrants; and so could the Romans the Decemviri and Triumviri. And no question but it was malice and spight, which made the Grecians call all Kings Tyrants; and both Romans and Grecians to make all Kings to be Ravenous creatures. And all those Kings who abuse their power, are by men usually called Tyrants, not justly. I find no such title given to Saul; Ahab, Ahaz, Nabuchadnezzar, but Wicked and Idolatrous, often. Nor is a Father or Husband, less a Father or Husband, if they abuse their powers, because they have a right of Command.* What is force or Tyranny.

10. *Dominion or Government is the exercise of Command by any Creature or company of Creatures, who have a right, or no right of Command. So that though all Government or Dominion be the exercise of Command, yet is not all Government the exercise of Power; as the Dominion or Government of Thieves, Robbers, and Pyrates, &c. is the exercise of Command, who yet have no right of Command.* What is Dominion or Government.

11. *All Power is Right, but all Right is not Power; as Jus Proprietatis & Ulfufruquarium, is Right, not Power.* How Potestas differs from Jus.

### Common Notion.

**A**LL Created Powers are from the Law of Nature, or Divine positive Institution, or Humane Laws.





## THE SECOND BOOK.

### CHAP. I.

#### *Of Society, or the mutual offices of Commanding and Obeying.*

To command  
and to obey,  
is no humane  
artifice or in-  
vention.



**I**f all Commanding and Obeying had been an Humane artifice or invention, then was there a time when Men lived out of Society, and in a parity or equal condition, without commanding and obeying. But there is no such time recorded in Sacred or Prophane history, wherein Men lived so, or when, or who first invented or introduced these offices of commanding and obeying: Besides, we see that Arts and Sciences are received in one place, and not

in another; and in the same place, and by the same men at one time, and neglected at another: But at no time or place did ever men live out of society, or commanding and obeying. All commanding therefore and obeying is no Humane artifice or invention.

To command  
and to obey,  
is natural.

*Pol. lib. 1. cap.*

2. If then there was never any man born, but was born in subjection; and all subjection being in the predicament of relation, which must suppose something commanding; and if all things which are not artificial or invented, are natural: Then is it as evident, as that *Homo est animal rationale*, that to command, and to obey, is natural. And to this does the highest Philosopher give testimony; *Imperare & parere, non solum ex numero rerum necessariorum sunt, verumetiam ex utilium, & statim ab ortu primo nonnulla inter*

*inter se distiterint, alia ut parerent imperio, alia ut imperarent.* And the highest of Roman Orators and Lawyers, Cicero, who says, *Sine imperio neque domus ulla, neque civitas, nec hominum universum genus stare, nec ipse denique mundus potest.* Besides, we see in all seditious men and assertors of Liberty, who will not be subject to rightful Governors, that none of them could ever yet attain to make men any where in a parity of condition; but by a propense natural disposition, when they have cast off the obedience due to others, they fall to command and obey among themselves: But this not having any foundation but from themselves, (Men being naturally ambitious of commanding, and impatient of subjection) it is Gods judgment upon them, that they rarely continue long in peace, but are obnoxious to continual seditions and confusions.

3. All powers being from God, and Gods ordinance mediately or immediately, *Rom. 13.* and Power being in relation, must refer to something which is subject to it. Power therefore and Subjection are the ordinance of God: But by the antecedent proposition, the offices of commanding and obeying, *viz.* of Power and Subjection, are natural. To command therefore, and to obey, is Gods natural ordinance, or from the Law of Nature.

Lib. 1. de legibus.

*If then to command and obey, be no humane artifice or invention, but natural and Gods ordinance, then is it most senseless for men to beg it for a principle, That all men are by nature in a parity and free condition, and that the will of man brought in the Powers and obedience due to them, in use now in the world, against Gods ordinance, and that freedom wherein by nature originally all men were.*

Annot.

4. If to command and obey, as Supreme powers and Subjects, had been an humane artifice or invention, then was there a time when men lived out of the offices of commanding and obeying, as Supreme powers and Subjects, and were introduced by men: But there was never any such time recorded in sacred or prophane history, or that they were invented or introduced by men: To command therefore and obey, as Supreme powers and Subjects, is no humane artifice or invention.

To command and obey, as Supreme powers and Subjects, is no humane artifice or invention.

*It is the silliest thing in the world for men to dream of a Golden age, in which all things were alike and common to all men; and that men lived promiscuously in a parity or equal condition; and never tell when that time was, or who lived therein: And to say that the Dominion and Subjection now in use, Manes will brought in; and yet never tell who, any where in the world, did ever introduce it. And sure if this commanding and obeying were brought in by the wills of men, against that natural right and law wherein God hath made man, it could not possibly continue at all times and in all places of the world, but that somewhere men would return to their own natural liberty.*

Annot.

5. If all things be either artificial or natural, and the offices of commanding and obeying, as Supreme powers and Subjects, be not artificial; then these offices of commanding and obeying, as Supreme powers and Subjects, are natural.

(a) To command and to obey, as Supreme powers and Subjects, is natural.

6. That Supreme power is Gods ordinance, and that Subjects must needs be therefore subject to it, the Apostle says expressly *Rom. 13.* But by the precedent proposition they are natural; They are therefore Gods natural ordinance, or due from the Law of Nature.

(b) To command & obey, as Supreme powers and Subjects, is Gods ordinance, and due from the law of nature.

7. This Apostle in chap. 5. *lib. 1. Pol.* proves. Besides, these offices not being topical, but universal, nowhere created by any humane Law, and due

(c) To command & obey, as Husband and wife, is natural.



To command  
and obey as  
Parents and  
Children, is  
from the Law  
of Nature.

How many  
ways the offi-  
ces of com-  
manding and  
obeying are  
caused from  
the Law of  
Nature.

as well where Gods revealed ordinance in the Scriptures is not received, as where it is, they are natural, or due by the law of Nature.

8. The mutual offices of commanding and obeying, as Parents and Children, not being from any Humane law, but being due in all places, as well where Gods revelation of himself is received, as where not, are natural, or due from the law of Nature.

9. God having created Man not only different from other creatures of this orb, as intellectual and rational, but also as sociable, *viz.* living in conversation and subordination, for *extra societatem vivere neminem*; He hath given by the law of Nature to some the power or right of commanding, and others he hath subjected to such powers. But he hath created these powers divers ways, *viz.* either upon supposition of some mutual act of the parties commanding and obeying; or upon supposition of some act of the parties commanding; or without supposition of any act of either the parties commanding or obeying.

First, I say, the Law of Nature creates these offices of commanding and obeying, upon supposition of some act of the parties commanding and obeying. As Matrimony is the mutual act of the Husband and Wife: I *A. B.* take thee *D. E.* to be my wedded wife; and I *D. E.* take thee *A. B.* to be my wedded Husband: by this act of the Husband and Wife, God by the Law of Nature gives the Husband a power or right of command over the Wife, and subjects the Wife to the Husband.

Or,

Secondly, upon supposition of some act of the parties commanding: As the Parents power arising from generation, the Parents must be supposed to generate, before they can have a power or right of command.

Or,

Thirdly, upon supposition of no act either of the parties commanding or obeying, as in all rightful Hereditary Monarchies, these offices are as much due from the Law of Nature, before any act of the parties commanding and obeying, as after.

All command-  
ing and obey-  
ing which  
God hath or-  
dained, is not  
from the Law  
of Nature.

10. Gods Ordinance to Man being either that Law or Ordinance, which he has ordinarily engraven in the hearts of Men; or his gracious goodness extraordinarily revealed in the Scriptures, and Gods revelation of himself by *Moses* and Prophets, by our Saviour, the Apostles and Evangelists, was extraordinarily and supernaturally given to them by Gods especial grace; nor could Men by any natural means attain to the belief of it. All offices therefore of power and subjection to them which are created by Gods will so revealed, are not created by the Law of nature.

All offices of  
commanding  
and obeying,  
are not Gods  
ordinance im-  
mediately.

11. All offices which are created by Divine Law, whether by the Law of Nature, or by divine positive institution, being from higher then humane causes, are indelible, and cannot be aliened, transferred, or communicated by any humane act, for *ejus est nolle, cujus est velle*; and therefore cannot the power and obedience of Parents and Children, of Husband and Wife, of King and Subjects, be aliened, dissolved, communicated, or transferred; but the offices of Masters and Servants, of Magistrates and those subject to them, are alienable, communicable, and transferrable, and sometime are, and sometime are not; they are not therefore from any immediate ordinance of God either positive or natural. But the offices of commanding and obeying as Masters and Servants, and Magistrates and those subject to them,

them, are but temporary, and determinable by the laws of him that made them; therefore not Gods ordinance.

12. Humane laws create Magistrates power two ways: Immediately, as when Supreme powers (which are the fountain from whence all Temporal laws are derived) constitute any Magistrate, giving him jurisdiction over the inhabitants of any place; or when the Laws or Higher powers enable such men to nominate their Magistrate, there the Nominators are the instruments by which the Law does transfer this Magisterial power.

How many ways power and subjection happens by humane laws to Magistrates and those subject to them.

13. The mutual offices of power and subjection between Masters and Servants, happen two ways; either created by the contract or pact of the Master and Servant, (and we have before shewed that all pacts and contracts receive their obligation from Humane laws) as the means by which Humane laws do create these offices; or else without any pact or contract of the parties commanding and obeying, as in the cases of Slavery where prisoners are taken in war, or men condemned thereunto for some offence; or of Apprentiship, where children are bound for such a term, by the Laws of their Country, or Parents. And I do grant Mr. Hobbs, Grotius and White, that this power and subjection, *Humana voluntas introduxit*; but not the parties obeying, as they most senselessly feign, but the Supreme powers or the parties commanding: And where they are not so created, all men are originally free.

How many ways humane laws create the power and subjection of Masters and Servants.

*I do much wonder at those men, who make all Supreme or Regal power to have its origination from the consent and aggregation of many families: For they not only confound the Masters power with the Fathers, which in the nature and cause we have already shewed, and shall more fully hereafter in their proper Chapters shew; but also make the Masters power to be from the Law of God, and Regal power to be a Humane institution: whereas the contrary is true in both. And what it is should move men to imagine, that after Adam's and Noah's posterity dilated themselves into many families, that they should give Adam and Noah more power then God gave them. I am sure no such thing, or the least probability thereof appears in Scripture; or that after Adam's and Noah's deaths, their Posterities became free and independent from all Government; which was (no body can tell when) brought in by the Pacts of Men, or by consent and submission of Families to it.*

Annot.

14. That power or right of command which God *jure divino* hath as solely and absolutely over all his creatures, as the Creator, first and efficient Cause of them; and therefore by highest right all obedience is chiefly due to them before any creature in all things: Or else power and subjection are caused from the Laws of Nature, or from the Law of God revealed in the Scriptures, or from Humane positive Laws. All Society which is not contained in these causes, is Tyranny in the party commanding; nor is any obligation in Conscience to such Commands, from the party commanded.

All power and subjection, from what causes.

Having thus far treated of the Causes of Power and Subjection conjointly, we shall hereafter in their several Chapters treat of them severally, and more at large. And we insist more largely hereon, in regard these Powers and Subjections are either so confounded in their Causes by other men, or such wild things begged for Principles, that (so far as I understand) no ingenuous man should grant.



## CHAP. II.

## Of Regal and Magistrates power.

Introduction.

1. **T**Here is no question but one of Mans chiefest happines in this life, consists in the contemplation of God in his works; to contemplate the Heavens and the Earth, the workmanship of his hands, and the admirable order and motion of them all, being by him so made and created. Nor is God less seen in the generation and birth of Man and other creatures, then in the creation of the Universe. And as admirable is the preservation of every Man, as his generation: For, abstracting from the internal cause,

Virg. Æn. 6.  
prop. fin.

*Spiritus intus alit, totamque infusa per artus  
Mens agitat molem.* —

As the Athenians did in their sentence on Socrates and the Captains at the Fight at Arginusa.

How God does renew, and preserve every Man, and every part of Man, by a perpetual motion, viz. the *Systole* and *Diastole* of the Blood. If a Man considers his outward preservation, not only from the violence of other creatures who are of much more force then himself, but also from the force and violence of his own kind; (for, were he not restrained, *Homo homini lupus*: And what are the People in general, but a sudden, rash, and furious Beast, carried hither and thither upon every wild fancy, raging to have this thing done, and presently lamenting because it is done?) He must needs confess there is no power under heaven which can restrain the raging of the sea, and the madness of the people. The Psalmist therefore, *Psal. 77.* when he calls to mind the works of God, and his wonders of old; *Thou thundrest from heaven, thou shakest the earth, thou dividest the sea*; and at last as the greatest wonder of all, he says, *Thou ledest thy people like sheep, by the hands of Moses and Aaron.* It is not therefore from any pacts and inventions of Man, that he may hope for any security; but by submitting himself to what God hath ordained for his preservation.

Regal power cannot be created by the People.

Isa. 45. 1.

Lam. 4. 20.

Joh. 19. 11.

2. Upon a survey taken in Scripture, how often *Christi Domini* are used, they are found to be thirty three; two of which are spoken of the Patriarchs, one of our Saviour, and all the rest of Kings only. Once of our Saviour, *Luk. 2. 26.* twice of the Patriarchs, *Psal. 105. 15.* and *1 Chro. 16. 22.* all the rest to Kings only and expressly. And though others were anointed, yet none but our Saviour, Patriarchs and Kings were the *Lords anointed.* Nor is Gods anointed peculiar to them, (not the material anointing, and the receiving and believing Gods revelation of him-self in the Scriptures, is essential to the making of Gods anointed here; but all rightful Kings are so, whether they be materially anointed, or believe Gods revelation of him-self in the Scriptures, or not: For not only *Cyrus* was not materially anointed, and an unbeliever, yet Gods anointed; but *Nabuchadnezzar* also, a cruel persecutor and destroyer of Gods people: ) But God calls them *Mortal Gods* too, *Psal. 82. 6.* And is it not strange that our Saviour should say, *No power can be but from above, data desuper*; and that Men should be so impudent as to affirm, that there is no power unless *data de subter*? and that against all sense and reason, as well as faith: For it is im-

impossible that any Power should be superior to the cause of its being; or that any thing should give that to another, which it self hath not. How then can an imaginary rout of Men give a power of life and death; and of creating property ( which not any of them, nor all of them together have ) to another?

3. Humane Laws being the accidents, or effects of Regal Power, they cannot be superior to give or create a being to the cause; Regal Power therefore cannot be made or created by Humane Laws. Regal power not made by Humane laws.

4. That in Regality, as well as in Subjects estates, *jus proprietatis & possessionis* have been divided, and Regal power usurped, and exercised by them, who had no right thereunto, is not only testified by infinite Authorities out of prophane History, but also many times in Sacred Writ, as in the cases of *Absolem, Adonijah, Athaliah, &c.* It is true indeed, that there is no visible power under Heaven, but only Mens Consciences that can judge between an Usurper and a rightful Prince; Yet ought men principally to have a care how they offend herein; for God no where denounces a more dreadful sentence, nor shewed a more terrible judgement then upon such Men, *Num. 16.* And if in Regality possession alone did create a just title, then were *summa injuria, summa justitia*; it being ( no question ) the highest injury to invade the highest authority or dominion of another. The possession or exercise of Regality, does not create Regal power.

5. If possession conjoynd with the submission and acknowledgement of the Subjects, did create regal power or right of command which Kings have over their Subjects, then were the dominion of Theeves and Pirates where others submit to them, just, and *Feroboams* title good to the kingdom of the Ten Tribes; nor the Children of *Israel* Rebels; but true Subjects after they had quietly submitted themselves to *Feroboam*. But this is false, for God does denounce them Rebels to the house of *David* unto this day, *1 Kings 12. 19.* And *Feroboam* himself a Rebel, after he was quietly possessed, and acknowledged by the Ten Tribes, *2 Chron. 13. 6.* Possession, with the Subjects acknowledgement and submission, does not create Regal power.

It is a very remarkable thing, that the Subjects of this Nation ( although pretending to be Christians ) have against all rules of Christian Faith, placed all power in Government to be from the people, and their obligation to it, to be from their own submission to it; and have by their often forswearing themselves to this and that Government, not only habituated themselves into a belief that there is no such thing as right or power in Government, but only possession; but also taken away all Religion and Obligation of an Oath in things lawful and indifferent. God no doubt permitting it, that they who would not stand and be protected by his ordinance and institution, should fall into all infidelity and perjury, and never be true to any thing they swear to, and set up instead of it. 1 King. 12. 19.

6. If the Law of God or Nature did create Regal Power by the acknowledgement or submission of Men thereunto, or that Subjects were the essential instruments by which Regal Power was originally created, and yet is continued in the world; then were not Men only free from Regal or Higher Powers before they did submit thereunto, but also free to make whom they would their Prince; and so by consequence there can be no such thing as Hereditary Monarchy in the world, which for many Hundred, nay Thousand years ( where God was not pleased to reign himself immediately over his peculiar people ) was in the old time the only Government in the world. For above 3000 years after the Creation, was neither Aristocracy, The Law of God or Nature does not create Regal power by the submission, or any act of the Subject.



Democracy, or Elective Monarchy ever heard of in the world; and yet Hereditary Monarchy is in above 19 of 20 parts in the world the only Government. Nor would any Government that ever was, or is in the world, grant this liberty to any one born in their dominion; but upon resisting it, or renouncing it, whether he ever submitted to it or not, proceed against him not as an Enemy, but as a Rebel and Traitor. To suppose therefore that Subjects acknowledgment and submission is previous the essential means by which God does create Regal or Higher Powers, is upon the matter to give the Lye to all the Powers and Governments that are, or ever were in the world.

Regal Power is the Ordinance of God, and created by the Law of Nature.

7. None of these things therefore, but some higher cause must create Regal power; and that Regal Power is the Ordinance of God, the Apostle saies expressly, where he saies, *Rom. 13*, that he which resisteth the Higher or Regal power, resisteth the Ordinance of God: And that this is not Gods Ordinance only to them, who receive and believe his revelation of himself in the Scriptures, is evident by his ordaining of *Hazael, Cyrus, Nabuchadnezer, &c.* and to put all out of question, the Apostle here calls Higher or Regal Power Gods Ordinance, and at that time whenas there was no King in the world which did receive the Scriptures for the revealed word of God. Besides, Kings reign by God, &c. *Pro. 8. 5.* and that Kings reign by God, not only where he is believed as having extraordinarily revealed himself in the Scriptures; *Job* in the state of nature long before the Moral Law was given by *Moses*, saies, *Reges in solio collocat in aeternum*, Regal power therefore is Gods Ordinance, and from the Law of Nature.

*Job. 3. 6, 7.*

Adam had Dominion over all Creatures, and not as Father, Husband, or Master of a Family.

8. Regal power being Gods Ordinance, and created by the Law of Nature, there was never any time wherein Men were borne out of subjection to it (not but that the Laws of Nature are often violated by Men) and that God created Adam an universal Monarch or King over all his other Creatures, is clearly said, *Gen. 1. 27, 28.* And God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it, and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth. And that this supreme power was given to Adam, not as Father, Husband, or Master of a Family, is manifest; for he was neither Father, Husband, nor Master of a Family; there being no Man or Woman in the world at that time.

Adam had Dominion over Eve, and not as Husband only.

9. The Scripture does not only command Wives to be subject to their Husbands, but the Apostle gives reasons wherefore, viz. *That the man is not of the woman, but the woman of the man. Neither was the man created for the woman, but the woman for the man. 1. Cor. 11. 8, 9.* Nor does he prove this subjection to be only due from the end of the womans creation, and her being a part of Man; but from Mans being first created, and to whom God had first given Dominion over all Creatures before the Woman was made, *1 Tim. 2. 13.*

Adam had Dominion over his Children, and not as Father only.

10. Although God gave to Adam only of Dominion over all Creatures, yet was it not intended that he alone should so enjoy that his Dominion, that others of his own kind should be wholly deprived of the use and benefit of them, without which they could not possibly subsist. When therefore that *Cain* and *Abel* were born, although the Dominion of all the Creatures

Creatures continued still in *Adam*, yet had *Cain* and *Abel* property in the Fruit of the Ground, and of Sheep. But this property could not be given to them by *Adam* as Father; for the Fathers power arising from generation, and the person being only generated, the Fathers power extends no further. The property therefore that *Cain* and *Abel* had in the Fruits of the Ground, and Cattel, was given them by *Adam* as King or Monarch.

11. Not only the Scriptures, and all Writers, many times express different things equivocally by one word; but also the same thing equivocally in different words: As a Chief Governor is often called not only *King*, but *Prince*, *Duke*, *Sultan*, *Pharaoh*, *Ptolemy*, *Cham*, &c. *Paterfamilias* signifies the Master of a Family, whether he hath a son or daughter in it, or not. Our Saviour, as the highest attribute of power, begins the Lords prayer with *Our Father*. So the Scriptures by *Patriarch*, *Prince*, and *King*, understand the same thing. The Patriarch *Abraham* is called a *Prince of God*, or a mighty Prince. A Prince sure he was, that could give battel and overthrow four Kings at once, *Gen. 26. 16*. And the King and Prince *David* is called by *S. Peter* the *Patriarch David*, *Act. 2. 29*. And Patriarchs as well as Kings are called *Christi Domini*. And that the Patriarchs mentioned in *Gen. 5*. were not only men endued with the ordinary power of Parents, but Princes in their generations, is manifest; otherwise it had been a vain thing for the Scripture to have mentioned a Genealogie of the Patriarchs from *Seth* to *Noah*, if every Father had had the same power with them. Besides, *Cain*, who was elder then *Seth*, had a wife and children, yet was none of the Patriarchs; and the reason was, because God for the murder of his brother *Abel* made him a vagabond and fugitive upon the earth. And as this Patriarchal or Regal power was with the Patriarchs before the Flood, so was it hereditary, where God did not interpose: For from *Seth* to *Noah*, only the First-born had it, or are mentioned for Patriarchs in Scripture. God, no doubt, by this great example teaching men, that where he does not interpose, this Patriarchal or Regal power is hereditary, and descends only to the Eldest Son, and Heir General.

The state of Man before the flood, and after *Adams* death, was not Anarchy, but in Society, and under Monarchy Hereditary. *Gen. 23. 6*.

*Gen. 4. 17.*

*Gen. 5. 12.*

12. If, as *Grotius* affirmeth, the state of Man had been *Jure naturali* in a parity or promiscuous condition immediately after the Flood, and that this *Jus naturale* be immutable by God himself; and that this Dominion which is now in use, the will of Man brought in, and that not the will of the party commanding, but in subjection: It had been a very vain curse in *Noah* (or rather of God by *Noah*) to have cursed *Chanaan*, and made him a servant of servants to his brethren; or that God should bless both *Sem* and *Japheth*, and make *Chanaan* a servant to them both. And let a man see the Generations of *Sem*, *Ham* and *Japheth*, where the Grandchildren of *Japheth* by *Javan* divided the Isles of the Gentiles, not in a promiscuous condition, but after their tongue, kindred, and in their nation. And so *Nimrod* the Grandchild of *Ham* by *Chus*, became a mighty Hunter in the earth, &c. And the beginning of his Kingdom was *Babel*, *Erech*, *Acad*, and *Calmeth* in the land of *Sinar*. (There is great division among Writers about *Nimrod*, whether he were the same with *Belus* and *Ninus*, or not.) And as the posterity of *Japheth* did not inhabit the earth in a parity and equal condition, so did not the posterity of *Ham*, but in their kindreds, tongues, countries and nations. And so did the posterity of *Sem*, *v. 31*. And *Gen. 11*. gives the genealogie of *Sem* to *Abram*, which came to pass in less then three hundred years after

The state of Man immediately after the flood, was not Anarchy, but Society, by the testimony of Scripture.

*Gen. 10. 5.*

Verse 20.



the Flood. And in *Abrahams* time, *Pharaoh* ruled in *Egypt*, cap. 12. and *Amraphel* was King of *Sinar*, *Arioch* King of *Elazar*, *Chodorlaomer* King of *Elam*, and *Tidal* King of the Nations, and *Bera* King of *Sodom*, *Birsa* King of *Gomorrha*, *Sinab* King of *Adma*, *Semeber* King of *Seboim*, and the King of *Bela*.

Gen. 14. 1, 2, 3.

Annot.

There is no reason that I understand, why men should affirm *Nimrod* to be the first Monarch after the Flood, from Gen. 10. 8. He began to be a mighty one upon the earth; and that the beginning of his kingdom was *Babel*, *Erech*, *Accad* and *Calneth*. Which proves it no more, then if a man should say, That *David* was a mighty one upon the earth, and the beginning of his kingdom was *Judah* and *Jerusalem*; that therefore there was never any King before him.

The state of Man most anciently, was never Anarchy, but Monarchy, by the authority of the most ancient of Vulgar Histories.

13. We begin with *Diodorus Siculus*, who after that in the first Part of his first Book of the *Antiquity of things*, having discoursed of the Creation of the World and Man, and given a conjectural opinion of the state of Man before they had language, houses, or art enough to clothe themselves; and having in the next Chap. discoursed of the fabulous Egyptian Gods; and in the 3. of the site of *Egypt*, and wonders of *Nile*; and in the 4. of the causes of the inundation of it; in the first Chap. of the second Part he descends to his History, and gives a narrative of the original Government of the *Egyptians* under the Gods, Heroes, and Elective Kings for 18000. years together; and after the Gods reigned *Menas*, and that his progeny in fifty two Kings, reigned 1400. years, and did nothing memorable: And then *Busiris* and eight of his posterity reigned, the last of which was called also *Busiris*, who built the great City called of the *Egyptians* *The City of the Sun*, and of the Grecians, *Thebes*; not only the most stately in Buildings, and adorned with all the Rarities of Nature, of all the Cities of *Egypt*, but of the whole world. After him was *Osymandrus*, and the eighth of his progeny from him, *Uchoreus*, who built the City *Memphis*: And the twelfth of his offspring after him was *Myris*; and *Sesostres* the seventh of his lineage was King, &c. In the first Chap. of the second Book he treats of *Ninus* as the first King of the *Assyrians*, and of *Aricus* King of the *Arabians*, contemporary with him; and of *Barzanes* King of the *Armenians*, and of *Farnus* King of the *Medians*; and in Chap. 2. of *Zoroaster* King of the *Bactrians*, &c.

In the 3. Book, treating of the *Ethiopians* beyond *Lybia*, he speaks of the strange manner of the death of the *Ethiopian* Kings, until that *Ergamenis* King of the *Ethiopians*, in the time of *Ptolomy* the Second, addicted to Philosophy and the Greek learning, first despised that manner of dying, which was this: The Priests which offered sacrifice in *Meroe* (and these were of greatest authority) when it seemed good to them, would tell the King that he must die, for so the Oracle of the Gods commanded, and that it was not meet that the will of the Gods should be contemned for the will of a mortal man; and they add other reasons, by which from an old observed custom they perswade the King to a voluntary death; and all the ancient Kings obeyed the Priests of their own accord, not compelled by arms or force, but overcome by superstition. In lib. 3. cap. 4. he makes four kinds of *Libyans* to inhabit the midland coasts about *Cyrene* and *Cirtes*; whereof they who dwell to the South, are called *Nasamoncs*; others sit at the West, *Anochiya*; others are called *Marmarida*, which inhabit between *Egypt*

*Egypt* and *Cyrene*, and part of the Sea-coast; the fourth kind excelling in multitude of men, are called *Maia*. The two latter obey Kings; the third are under no Kings, but always intent upon robbery, they know no justice; yet a little after he says, they every year swore the people subject to them, to obey their Prince. He speaks not of the Government of the fourth, but of the *Amazons* which in old time governed *Libya*.

Let us see the most ancient Government of Nations out of other Authors, *Scaliger* out of *Africanus* and *Eusebius*, in the year of the *Julian* period 2625, which was in the year of the world 1750. makes *Egialus* King of the *Sicyonians* (not an hundred years after the Flood) who reigned 52 years, after him *Enrops* 45 years, after him *Telchin* 20 years, after him *Apis* 25 years, after him *Thelxion* 52 years, after him *Agyrus* 34 years, after him *Thurimachus* 45 years, &c.

From *Egialus* came the *Egialian* Region, which was after called *Apia*.

*Aventinus* makes *Tuisco* the son of *Noah*, who sent by his Father 131 years after the flood, came into *Europe* with 20 Captains; and reigned as King of the *Germans* 176 years; and that *Ingævon*, *Germanicè* *Ingaab*, as some say, others *Inwohner* the brother of *Mannus*, reigned after him 45 years. After him *Istavon* the son of *Ingævon*, (whose wife *Freia*, the *Venus* of the *Germans*, gave the name *Freytag* or *Friday*) reigned 50 years. After him succeeded *Hermion* or *Horman*, the son of *Istavon*, who reigned 63 years. To him succeeded *Marsus* the son of *Hermion*, who reigned 46 years, &c.

*Inachus* in the year of the world 2094. was King of the *Argives*, who reigned 50 years. *Phorone* his son succeeded in his stead, who reigned 60 years. *Apis* the grandchild of *Phorone* succeeded, and reigned 35 years. *Argus*, *Apis* his son succeeded his father, and reigned 70 years. *Criasus* his son succeeded him, and reigned 54 years, &c. Nay, the very *Athenians*, beginning at *Cecrops*, for 867 years were governed by hereditary Monarchs, before there were any footsteps of the Democracy or *Archon*. Nor can any man shew (unless where God was pleased peculiarly to reign; or in the *Lacedæmonian* Duarchy, who were governed by two Kings descended from *Eurythenes* and his brother *Proclis*, who ruled in *Lacedæmon* from about the year of the world 2848. until both lines became extinct almost together, about the year of the world 3730.) for above 3000 years after the Creation any other Government but Monarchy Hereditary, nor any of them made from any Pacts or Contracts of Men.

What therefore men feign to be originally in the People, was truly in Kings; and *Justin* says truly, *Principio Rerum, Gentium, Nationumque, imperium penes Reges erat*. It was then a Golden Age, (not when Men lived in a promiscuous Herd or Rout, as these Men, and Poets feign; but) when Men content with their Government of Kings, enjoyed peace and plenty in security: And it is Mens wrangling about they know not what, and not content with Regal Government, that hath made such an Iron Age in the world. If a man looks into *Persia*, *India*, *Ethiopia*, and other parts of the world, where Subjects content with those Governors which God hath given them, continue in obedience thereunto, he shall find them not only live securely, but abound in all plenty and riches, and yet may be said to enjoy a Golden Age; and contract the Iron Age to those wrangling *Europeans*, who not content with Gods Ordinance, make to themselves an Iron Age, and without end miserable, by being always obnoxious to Confusions and Civil wars.

It



Annot. 1.

It is neither an Article of Faith, nor can there be one instance given out of sacred or prophane History, that ever Supreme or Regal Power was ever made from the Pacts or Contracts of Men, or consent of Families. I do not therefore understand what should move Men against the constant practice of the world in all ages, to require this for a principle, which being vaine and superstitious, all that can be deduced from thence cannot be better or amount higher.

Annot. 2.

*ob.* But God and Nature never made the same thing of different species, and if all power in Government be from God, how then came Government to be of different species, *viz.* Monarchy, Aristocracy, & Democracy? I answer that God hath made Man upright, but he hath sought out many inventions: Therefore let Aristocracies, & Democracies, answer for themselves; anciently there was no Government in the world but Monarchy, nor does God ever command obedience to others; and the very *Athenians* for above 800 years could find a Government under Kings hereditarily, before any footsteps of Aristocracy or Democracy was ever heard of in the world; nor did they ever transgress the bounds of *Europe*, unless in the *Carthaginian* State, and when the *Magi* usurped in *Persia*. It was Pride in the *Romans* and *Grecians*, who not only esteemed all the world barbarous besides themselves; and all Kings to be of the kinde of ravenous beasts, but were the first inventers of these Aristocracies, and Democracies, and made all Power in Government to be Artificial and Political (not only in the exercise which is true, but also) in the cause. This *Fus Politicum* was of a more large extent with the *Grecians*, then the *Fus Civile* was with the *Romans*: For the *Grecians* esteemed that to be *Fus Politicum*, which is common to all Men, conjoynd with any society; the *Romans* called that *Fus Civile*, which is proper to any City. So to buy and sell, was by the *Grecians* called Politick; the *Romans* called not those things Civil unless to sell by such a measure and at such a time; the *Romans* called the Cloaks and other habits of vestments, used by themselves and other people, civil. But let any Man judge whether these Men, Mr. *Hobbs*, *White*, and *Grotius*, being Christians, and two of them very learned Men, do reasonably, not only to reject all precepts and examples of Sacred writ, and all Testimonies of the consent of the present World, and Testimonies of all most antient Histories, from the examples of those most unreasonable Men; besides, the case between them, is as unlike as can be: For though they agree that this *Fus Politicum*, or *Civile*, is so as well in the cause, as exercise, and all power to be originally with the people; yet by the people did neither *Romans* nor *Grecians*, understand a company of Men in a rout or promiscuous parity, but they who were *Civitate donati*: nor did ever the People of *Athens* or *Rome* acquire their Dominion from the people subject to them, by *do* or *dedi*, and not *dabo* or *faciam*, as these men feign all power to be originally deduced, but by rapine & extorting it from their rightful Kings in whom it undubitably was.

Annot. 3.

If it be questioned, how originally this power came into the world if not by the Pacts of Men, or consent of Families? I answer, *Rem teneo, modum nescio*; for the manner of it, how it came originally, I am not bound to give an account, where the Scriptures and most antient Historians do not confirm it; it is enough, that I having proved it to be natural and Gods Ordinance; it was never otherwise, especially having the practice of the present world, and the Records of all prophane and sacred History.

14. It is true indeed, that the Humane Laws, and the exercise of Regal Power, is Politick, Voluntary, and Artificial; but that these Laws are received and exercised in those places where they ought to be, which makes Kingdoms, is expressly said by the Prophet *Dan. cap. 4.* in three places, The most Highest ruleth in the kingdoms of men, and giveth it to whom it pleaseth him, *ver. 7.* And it was *Nebuchad-nezzars* punishment for his pride, that he should have his dwelling with the beasts of the field, untill he knew that the most Highest ruleth in the kingdoms of Men, and giveth it to whomsoever he will, *ver. 25,* and *32.* So that it is evident, not only Kings, but Kingdoms, not only their *esse*, but their *essentia*, their Right, but also Government, is from God immediately; and that this is a Declaration of the Law of Nature, not only long before God, by the Prophet *Daniel* speaks this, were Kingdoms upon the earth; but also no Kingdom, or King, which at the time that this was spoken, that did receive or believe Gods Revelation of himself in the Scriptures, Kingdoms therefore, or the exercise of Regal Power, is Gods Ordinance as well where the Scriptures are received, as not, and due by the Law of Nature; and by consequence, the obstinate resistance of Kings in their Government, by their subjects is a violence upon the Law of Nature.

Not only Kings, but Kingdoms have their being from God and by the Law of Nature.

15. Sir *Francis Bacon* in his life of *Henry 7.* relates that *Perkin Warbeck* by the often affirming himself to be *Richard Duke of York*, second son of *Ed. 4.* did at last believe himself to be so indeed. The violent and frequent usurpations of usurpers in this Island, and some other Northern and European Region, hath invested such a habit in Men, that (renouncing reason, as well as all faith and belief of God in the Scriptures) they with much confidence affirm, nothing but possession, or possession and submission of Subjects, to be requisite with Kings. Both which do no more make a rightful King than a Mans Defeisin, Abetting, or Intruding into the signiory of another, and the Tenants attorning to him, does make him rightful Lord of the Manor. But neither humane Laws, nor Man, nor any thing under Heaven, can endue any Creature with a power over anothers life and fortune, who is of the same kind with himself, and without which there can be no supreme power, and by consequence, no society among Men. There are but four waies by which Regality can happen.

How many waies Regality comes to pass.

First, When it is immediately and expressly given by God, as it was to *Saul, David, Solomon, Hazael, Cyrus, &c.*

Or Secondly, derived from him, who had Regality truly vested in him; but this derivation must not be from the Election, Adoption, or the will of him who was invested with the Regal Power, which at highest cannot amount higher than a humane Law, which by the 3 para. of this chap. cannot create Regal Power. It must therefore be derived by *Primogeniture*, which is derived from a higher cause than humane Laws, for *jura sanguinis nullo jure civili dirimi possint.*

Or Thirdly by *Lot*, which we have shewed to be by the Law of Nature.

Or Lastly, *Jure Primi Occupantis* (if its Occupant be capable thereof) for Man being a sociable creature by Nature, and society according to *Aristotle*, being contained in many divided parts, therefore in the society of Men there must be *unum quid, quod imparet; alterum quod pareat.* But whether Aristocracy and Democracy be *unum quid,* that

Lib. 1. cap. 5. Pol.



that may *jure imperare*, to me is a question, neither of them being any Institution of God, or from the Law of Nature, but brought in by unjust usurpation and violence, and against the universal consent and practice of the world for above Three thousand years. I do exclude Conquest to be any cause of Regal power, where God does not give it: For either this Conquest must be made by power, or force: If it be made by power, or one who is Gods Sword-bearer, no new power ariseth from thence, but only a dilatation of the exercise of the old, which was formerly in him: But if it be done by Sword-takers, then is it no other then unjust usurpation and robbery. The World being large, and the Men in it alwaies ambitious, I will not undertake to answer for the matters of fact which Men have done in all Ages; nor do I doubt but that oftentimes the alterations and conversions of Government have happened from the will of God.

Object.

But it is evident by the Prophet *Daniel*, c. 4. 23. 25. that *God ruleth in the kingdoms of men, and giveth them to whomsoever he pleaseth*: And if that he were pleased to make *Saul*, *David*, *Solomon*, and *Feroboam*, who reigned over his peculiar people, and *Hazael*, *Cyrus*, &c. who knew not God, Kings, and yet neither by Lot, Primogeniture from a rightful King, or by right of First possession; then for ought is known, these alterations which have otherwise happened, and do come to pass in the world, may be from the will and gift of God.

Sol.

I answer, If it may be Gods will that these alterations and confusions happen in the world, it may not be Gods will; & *affirmanti incumbit probatio*. Let them therefore, or they that make these alterations and confusions, prove that Gods will, and not their own perverse will, was the first cause of them. It is true, and I grant that God does oftentimes for the punishment of a Nation, convert the succession of their Kings into another line, (yet did he never so far chastise any Nation, as to subject it to an Aristocracy or Democracy.) So it is necessary, offences come; yet shall that never excuse them by whom they come. And so it many times happens, that men cannot avoid Gods judgments, and die; it is no consequence therefore, that men should run themselves into them, or kill themselves. It may be it is Gods will that my Father should die, or that he will destroy my Country and Laws, &c. It does not therefore follow, that a man may kill his Father, destroy his Country, or endeavor to subvert the Laws thereof. Men are not alwaies obliged to conform their wills to Gods will, but to do what he wills and commands them. I am obliged to pray for my Parents and Country, when it is Gods will they should be destroyed.

1 King. 11. 13.

1 King. 12. 19.

Compare these times with these, and see the event

1 King. 12. 32, 33.

It was Gods will, that *Feroboam*, for *Solomons* sin, should be King of ten Tribes of *Israel*; yet because the Tribes did will it, and not upon Gods command, he pronounced them eternal Rebels, and *Feroboam* a Rebel, because he took it upon those terms, 2 *Chron.* 13. 6. Nor do we find that ever *Israel* joyed good day after: For the policy of *Feroboam*, to continue his dominion over them, must be preferred before Gods worship and service; in order thereunto, *Feroboam* must take counsel and make Calves, which he says brought the Children of *Israel* out of *Egypt*; any Priests were good enough to sacrifice to them, no matter whether they were Priests, or of the Tribe of *Levi*, the lowest of the people would serve the turn; yea forsooth, *Feroboam* himself could hold forth to the people, and burn incense

incense, which before was peculiar to the Priests. But it is a strange thing, that this invented policie of *Feroboams* for the keeping of the ten Tribes in their obedience to him, should be the cause of so wonderful a Captivity, that to this day it is unknown what became of them and their posterity.

2 King. 17. 21, 22, 23.

16. *Parum est jus, nisi sunt qui possunt jura gerere*: And men have always by woful experience found, that all Tyranny of a rightful and known Prince, is not to be compared with the miseries and calamities, where the Prince is not known, or rejected, but every popular and ambitious Man arrogates and usurps to himself what should be justly ascribed to the lawful Prince. Nor does the calamities of miserable men in such a condition end so; but God no where shewed so great a judgment, as upon those men, (*viz. Corah, Dathan, and Abiram*) who rejected their rightful and known Prince, *Num. 16*. Nor does he ever denounce a more dreadful judgment, then upon those men who resist Higher powers, *Rom. 13*. How great then will his judgment be upon them who reject them?

The miseries of men, when the Supreme power is rejected or unknown.

17. He is a natural Prince of right, or by the Law of Nature, who truly prescribes from such Ancestors, that no mortal creature can make any just exception, or superior claim. And so great a Lover of Men, and Truth, is God, that scarce in all the world was it not known in any Nation, who was the rightful Prince thereof, when his Subjects did reject him.

Who is a Natural Prince *de jure*.

18. It is true, that there is no visible power under Heaven, but only mens Consciences that can direct them, where Titles of Princes come in question: But where diversity of Titles are alleadged, that which is truly and indubitably most antient, is the best; for it is a true rule in all descents whatsoever, that, *Dormit aliquando, nunquam moritur jus*: But this must be *jus apparens*; for, *De non apparentibus, & de non existentibus, eadem est ratio*. Whether the Title of the Heir general, or Heir male be better, we shall treat more at large in *Cap. of Succession*.

Where there are diversities of titles, which is to be preferred.

19. *Jus is duplex, Proprietatis, & Possessionis*. And that this Right is divisible as well in Regality, as private mens Estates, is demonstrated by *para. 4.* of this *Chap.* And if it be true, as it is, that no Being can be superior or better then the Cause of its being; then will it necessarily follow, that all Kings who inherit from Usurpers, cannot have a better title then that which the Usurpers had, so long as a superior or better claim can be made by another. Nor do I fear to affirm, *Hen. 4. Hen. 5. and Hen. 6.* were natural Kings of *England*, and did inherit the Crown of *England de facto*, but not *de jure*.

Who is a Natural King *de facto*, and not *de jure*.

20. Although nothing which is naught in the beginning, can be bettered by the continuance of time; yet may Usurpation, although naught in the beginning, be bettered in time, *viz.* if the Usurpation be of that continuance, that it outlives all claim that can be justly made by another; for, Possession is title sufficient against all men, who have no *jus ad rem*. Hence it was, I conceive, that *Athaliah* desired to cut off all the Royal seed of the house of *Judah*, *2 Chron. 23*. And that all Usurpers do not think themselves safe in their usurpations, unless they secure themselves by attempting greater, *viz.* in destroying all the Progeny of those men, who can make a better and more superior claim then they have. Where therefore Democracies and Aristocracies, (if such many-headed beasts, by the Law of God or Nature, be sufficiently qualified to be capable of this power) and Elective Monarchies have been of that continuance, that no superior claim can be made justly by another; let them continue their

How Usurpation may be bettered.



possessions still, for all me: Yet would I not for any good in the world venture my life in any of them, or judge any man to death in any of them, unless it could be made appear that God, or the Law of Nature did ever institute any such things, or that any where in the world they were not usurped, or introduced by them who had no right to do it. But however, it is a most unreasonable thing, that their actions of Adoption and Election should be taken for precedents in rightful Hereditary Monarchies, which cannot admit them without a total dissolution, and do justly attribute their Governments to a higher then humane cause.

Wherein the  
decision is to  
be by Lot.

21. Where in Hereditary Monarchies the whole Line is extinguished, there the decision is to be by Lot; for, *The lot is cast into the lap, but the whole disposition of it is of the Lord, Pro. 16. 33.* But if any one gets the possession before such disposition, his Title by the antecedent proposition is good enough; besides we have demonstrated by *para. cap. 1. lib. 1.* that *Fus primi occupantis* is good by the Law of Nature.

How blessed  
and happy  
men are,  
where Su-  
preme powers  
and Laws are  
certain.

22. If it be *Misera servitus, ubi Fus est vagum aut incognitum*; a miserable servitude, where the Law (our Lawyers by *Fus* understand Law) is wandering or unknown: Then by the Rule of contraries, it is a happy Freedom, where the Law is certain and known, to which a man may safely and securely direct his actions. If it be a miserable slavery, where the Law is wandering and unknown; how much more miserable a slavery is it, where the Supreme Power is wandering and unknown? What confusions, murders, rapine and spoil of all things sacred and civil, must men necessarily fall under? The woful and miserable condition of this Nation since our late Distractions, hath sufficiently manifested the consequence of it. If then such a condition be so miserable, how happy then is that Nation, where by Gods mercy men are certain who is their Prince, and to whom they may securely pay their obedience, and assuredly expect protection in their lives and estates? If there be nothing more servile and base, then to be insulted and tyrannized over by them, who by no right command over us; how ingenuous and virtuous is it to be subject, where by all Divine and Humane laws we owe our obedience? For out of the offices of commanding and obeying, did never any man live; and where men will not be subject to them who may by right command over them, they shall be slaves either to their own ambition, or to others, who by no right command over them. And if it be most woful and horrible by resisting Higher Powers to incur damnation; (Note, the Apostle does not say, You must needs be subject to Governments, and who so resists Government shall receive to himself damnation; for the Empire of Thieves, Robbers and Usurpers, is Government; but to Higher Powers who have a right of command from God:) to what a condition then have men brought themselves, where either they are uncertain of the Supreme Power, and so are either uncertain whether in their actions they incur this dreadful sentence; or else where they are certain where the Supreme Power is, and yet dare not for fear of their lives actively submit to it. Who is the rightful *English* Sovereign, and to whom all *Englishmen* by all Laws of God and Man owe their obedience, is so evident, that I never heard any man deny or dispute it.

Rom. 13.

The end for  
which Rega-  
lity was or-  
dained by  
God.

23. The *ratio finalis*, or the end for which God hath ordained Kings, is for the protection of them whom God hath committed to their charge and government; not only by all just and due means to protect them from the

the outward violence and oppression of their outward Enemies, but also in peace inwardly, and by all means to suppress all faction and sedition of ambitious men, who would disturb it. *He chose David his servant, and took him from the sheepfolds, as he was following the ewes great with young; he took him that he might feed Jacob his people; and Israel his inheritance: So he fed them with a faithful and true heart, and ruled them with all his power. And that Kings may be nursing fathers; and Queens nursing mothers to Gods Church.* 1<sup>st</sup> Sal. 78. 71, 72, 73. And consonant to these revelations of God by these noble Prophets, is the declaration of the Saintly King Edward Confessor: *Rex autem qui est summi Regis Vicarius, & ad hoc constitutus est, ut regnum & populum Domini, & super omnia sanctam ecclesiam regat & defendat ab injuriis, maleficos autem destruat.* Isa. 49. 23. Leg. S. Edw. cap. 19.

24. By this which hath been said, it is evident that the power of all Kings is alike and equal, viz. Supreme, and Gods Ordinance, and from the Law of Nature. The difference between Kings is only in the exercise of their power, some being contracted into narrower terms; and others of a more vast extent and dilatation. Where therefore one King extends the exercise of his power into the dominion of another, by conquest or otherwise, no new power ariseth from hence, but only an extension of the exercise of the old: And so by consequence, the invasion, usurpation, or conquest of Subjects or others, who before had no Regal power, cannot create any after.

No power  
arises from  
Conquest.

25. *Naturalia determinatur ad maxima & minima.* There is nothing in Nature but hath its beginning, termination, and ending: And so Regal power hath its beginning, termination, and ending from the Laws of Nature; and all men are to be subject to those powers, wheresoever they are: For no man, when he comes into the power of any Prince, whether he be his natural Sovereign, or not, but is obliged and subject to the power of that Prince wherein he is; therefore if a Frenchman goes into Spain, or a Spaniard comes into England, they are subject to the powers of Spain and England, so long as they continue there. And since it is impossible that two Supreme powers can be in one place; where any one King comes to be in the exercise of another Kings power, he is subject to that King so long as he continues in the exercise or dominion of that King. By more reason therefore ought the Subjects of any Prince to be in subjection to Supreme powers, so long as they continue in the exercise of their power, whether it were by Conquest, or not. Besides, God hath ordained Supreme powers for mens preservation, not their destruction. And there must be some visible power upon earth, which may put a period to and decide differences, or they will be endless: But there is no power under heaven, but their sword, that can put a period to the differences of Princes; what therefore in such case the sword decides, ought to be obeyed; and the conquered Subjects, nay Princes who come into the dominion or exercise of anothers power, ought to be subject to it, so long as they continue therein: God therefore pronounceth Zedekiah a Rebel against Nebuchadnezzar. But this reason cannot hold for Subjects against their Sovereign, where the Law may decide their differences, and where by no Law of God or Man they are permitted to take the sword.

How far, and  
when Con-  
quest is to be  
obeyed and  
submitted to.

26. *Cujus est velle, ejus est nolle:* No power less then that which made anything, can alter it: But Regal power is Gods ordinance; therefore nothing less then the power of God can alter, transfer, or communicate it.

1<sup>st</sup> Chro. 36. 13.  
Regal power  
cannot be  
transferred  
nor commu-  
nicated by  
any humane  
or voluntary  
act.



Yet is the exercise of it subject to violence: As, *Gravia sursum, levia deorsum feruntur*; yet may a man by violence throw a stone upward, and depress smoke from ascending, without altering the nature of either. So though Regal power cannot be transferred nor communicated by Man, yet is the exercise of it not only subject to violence and usurpation, but also being voluntary, may be suspended by Supreme powers themselves, without any diminution of the power or right of exercise of it. When therefore Subjects or Enemies do unjustly invade and possess the Dominion of another, this possession does not divest the right or *jus ad rem* of that other, but only suspend the exercise of the others power or right during such usurpation. So may a King by a league or peace with others by his act, suspend the exercise of his power in any place unjustly usurped from him by others, yet without diminution of his power or right to that place: But this act cannot oblige his Successor, nor himself after such term, but they have a just cause of war if it be not restored.

Having thus far treated of the efficient or final cause of Regal power, it is time to descend to the Attributes of it.

### CHAP. III.

#### Of the Attributes of Regal power, and incidently of the Power of Magistrates.

The sword of Justice is his, who hath the Supreme power.

1. **W**HO hath the Supreme power, hath the sword of Justice to punish them who transgress Laws, and endeavour to cause sedition: *He is the Minister of God to thee for good; but if thou do that which is evil, be afraid, for he beareth not the sword in vain; for he is the Minister of God, a revenger to execute wrath upon him that doth evil, Rom. 13. 4. And Gods rod is in his hand, Exod. 17. 9.*

The power of making War and Peace, belongs to the Supreme power.

2. The end of all Government is, either to preserve the governed inwardly in peace, or to defend them from the outward violence and opposition of others. In vain therefore should Government be, if he who hath the Supreme power, may not as well defend Subjects from the violence of others outwardly, as to preserve them from factions and seditions within. And this power God gave to *Moses, Joshua, David*, and all the Kings of *Judah*; nor can any King be a Supreme Prince without it, nor the governed in a probable condition of hoping for preservation from it.

All Judgment is with him.

3. Judgment is the determining of a good or bad action, which cannot be in any who is subject to another. What therefore could be a more subtle temptation of the Devil to our first Parents, then to tell them, *Gen. 3. 5.* that by eating the forbidden fruit, they should be like to God, knowing good and evil. *Solomon*, as the most requisite thing, prays to God, that he would give him an understanding heart, that he might be able to judge between good and bad, *1 King. 3. 9.* And, *The King by judgment establisheth the land, Pro. 29. 4.* And, *Give the King thy judgments, O God, and thy righteousness to the Kings Son, that he may judge the people according to right, and defend the poor, Psal. 72. 1, 2.*

4. The

4. The right of making Laws is with him: *The Scepter shall not depart from Judah, nor a Lawgiver from between his feet, until Shilo come, Gen. 49. 10. Submit your selves therefore to every ordinance of man for the Lords sake, whether it be to the King as Supreme, 1 Pet. 2. 12.* And this is the onely visible means by which Subjects may become safe, rich and happy.

*Jus legislativum penes eum.*

5. In punishment, Equals cannot judge Equals, much less can Inferiours judge Superiours: But a Supreme Prince cannot have an Equal, much less a Superior; therefore a Supreme Prince cannot be punished. If a Supreme Prince might be punished for any thing he doth, then cannot he do any thing but he will be liable to punishment for so doing: For, what property can he give to one, which will not offend some other? Nor did the veriest Thief or Murderer ever suffer punishment, but some of his Comrades would seek revenge, and if they might, would punish the Lawgiver. Besides, who shall judge his Prince? If any one, then every one may. *Let no man therefore be hasty to go out of his sight, nor stand in an evil thing, for he doth whatsoever pleaseth him. Where the word of a King is, there is power, and who shall say unto him, what doest thou? Eccles. 8. 3, 4. The Lord forbid that I should do this thing unto my Master the Lords Anointed, to stretch forth my hand against him, seeing he is the Lords Anointed, 1 Sam. 24. 6.*

*That he does all things without punishment.*

It may seem to some, that this unlimited power of doing any thing with impunity, will only beget a confidence in Kings of doing what they list, without ever taking care of their duty in preserving their Subjects from intestine broils and factions, and from the outward force and violence of their Enemies; whereas (more narrowly looked into) no men are so subject to care, and have their wills less then they: For, private men, if they do any thing in their passion, their fame and fortunes are alike, neither much removed from their persons, few take notice of it: But they who are set in high place, all men take notice of their actions. In the greatest Fortune therefore, is the least Liberty; and that which in other men is termed Anger, in them is called Pride and Tyranny. Besides, in private men it is enough that they themselves do well; but Princes must have a care, that neither they, nor their Ministers do ill.

*Annot.*

6. *Tibi soli peccavi*, says the Psalmist, *Psal. 50.* Humane Laws are the organs or instruments of the Power that governeth; they cannot therefore extend themselves to bind him from whom they are derived; for, *omnis potentia activa, est principium transmutandi aliud.* Besides, the Prince may free other men from the obligation of the Laws, and therefore much more himself: And if Supreme Princes were obliged by their own Laws, then were Humane Laws, as well as the Laws of Nature, eternal and immutable, which is absurd; nor could Humane Laws protect Subjects, when any thing happens (which comes to pass every day) that was not foreseen at the making of the Laws. Humane Laws are made to oblige and preserve the governed, *necessitate coactionis*; but they cannot have any obligation upon Lawgiver who is the Supreme power, unless a man will grant that an Effect may be prime and superior to the Cause. Nor were ever other Governments subject to their own Laws.

*The Supreme power is not obliged by his own Laws.*

7. No Subject hath any Property (except Ecclesiasticks) but by the Laws of his Country: But by the precedent Proposition, no Supreme Prince can be obliged by his own Laws, and therefore no Subject can have property against him. If any Subject had property against the Supreme power,

*No man hath any thing proper against the Supreme power.*



power, then could not the Supreme power impose a Forfeiture of Goods in case of *Præmunire*, Attaint, Conviction of Treason or Felony: But the Consequence is false, and therefore the Antecedent is false, That any man hath any property against the Supreme power. Besides, there could no Fine, nor Fine and Recovery be levied or suffered, if he in Reversion or Remainder had property against the Supreme power: Nor could an Act of Parliament enable Tenant for life to make sale of his Estate.

Annot.

It is remarkable, that the Children of *Israel* should not be content to have God to reign over them immediately, who did himself give them Laws, being enquired of by the High-Priest. *Samuel* might well say therefore unto them, *Ye shall cry in that day because of your King, which (not ye shall choose, but which) ye shall have chosen you; and the Lord shall not hear you in that day,* 1 Sam. 8. 18. For Gods ways and actions are always perfect, whereas by the reason of humane frailty, the best mans actions are subject to imperfections. But if it seems grievous to any man, that he holds his goods at the will of another; let him consider, that God, since *Adam*, did never give any Nation (but only the Children of *Israel*) Property, but always used the mediation of his Vicegerents: And since Property must be derived from some Humane act, (for the Law of Nature gives none but to Supreme Princes; and therefore the possessions of Kings are called *Sacra patrimonia*, because Kings have no Superior but God Almighty: *Prædium Domini Regis est directum dominium, cujus nullus Author est nisi Deus.*) How much better is it for Subjects to hold of one Man, then of many? For nothing can be objected against one, but will have more force against many: And let any man shew me in these last five hundred years, any Subjects estate taken from him without due and legal proceeding, by the act of any of the Kings of *England*; and I will shew him five hundred, who not being liable to any punishment by Law, have been ruined themselves and their families in seven years, and that for observing the Laws, and against the will of the King.

Sir Ed. Co.  
Com. on Lit.  
p. 1. 6.

Annot. 2.  
Obj.

But many Actions have been brought against the King; which, if no man hath Property against him, may seem inconsistent.

Answ.

But the question here is not, what the King may do, but what he hath done; Not what the King may declare Law, but what he hath already declared Law.

Power of Ma-  
gistrates from  
him.

8. Majesty is from the Law of Nature immediately; but the power of Magistrates is not so, but mediately, that is, from him who hath the Supreme power. Magistracie is the instrument or organ by which Majesty is conveyed to every place, whither its own power is extended: And as Majesty is restrained to the Laws of Nature, and is accountable to God for all the omissions and transgressions of them; so Magistrates are restrained to Humane Laws, and ought to give an account of their actions to him that hath the Supreme power. And as no man can offer violence or contempt to Humane Majesty, but it is a contempt and violence to the Majesty of Heaven; so no man can offer violence to, or condemn Magistrates, but it is done to Humane Majesty, from whence their authority is derived. Wherefore Subjects must submit to Governors who are sent by Kings, 1 Pet. 2. 14.

Annot.

By this Proposition it is evident, that although Supreme power cannot be divided, yet the exercise of it, may: For where a King is an Infant, he

he cannot exercise his power, who can neither act any thing, nor express what he would have done; nay it is impossible for the best and wisest King that ever was, to exercise his power every where; for one body can be but in one place at once, though the power thereof may be diffused every where, as the light and influence of the Sun is diffused every where, although the body of it can be but in one place: And the exercise of power by Magistrates, is like Gods governing the world by natural causes, who being the first Mover of all things, produceth natural effects by the order of second causes. *Jethro* his counsel to *Moses* therefore is to be taken, *Thou wilt surely wear away, both thou, and this people that is with thee: for this thing is too heavy for thee; thou art not able to perform it thy self alone.* *Exod. 18. 18.*

9. *Quando lex aliquid alicui concedit, concedere videtur & id, sine quo res ipsa esse non potest*; where any Law Divine or Humane, does give any thing, it gives all the means, by which this otherwise could not be had. And that God by the Law of Nature has given Kings a power to protect their Subjects, we have sufficiently demonstrated; but it is impossible Princes should protect and govern their Subjects, if they might not rule their actions. Now all actions and motions are either regular or irregular: All regular motions and actions may be reduced to one certain beginning; where the beginning is not one, and certain, there they may be called commotions or confusions, rather than motions or regular actions. But all Assemblies are motions, and therefore they must be reduceable to some one certain principle, or they are irregular or commotions: If then Christian Princes have not a right of calling Assemblies, but others as well as they; then must it either necessarily follow that Christian Princes have not power sufficient to govern and protect their Subjects, and that their Subjects motions cannot be regular and orderly, but confounded and irregular, and so the law of nature, and the end for which God ordained Princes, inverted. For my part, I will not dispute the Power of God in the planting of The Church, either under the old or new Law, how that he did dispence with the actions and motions of his People and Ministers, and set Father against Son, &c. and that to make his Power known, he would plant his Church, notwithstanding all Temporal Powers whatsoever: but this I do affirm, that God after the deliverance of the *Israelites* out of *Egypt*, did give to *Moses* only this right of calling Assemblies, as appears clearly by *Numb. 10. 2.* for only to him is the charge of making the Trumpets to call the congregation together; It is true, that *vers. 8. the sons of Aaron shall blow with their Trumpets.* but neither *Aaron* nor the Priests had any Power to make them, but only *Moses*; they must therefore have them from him, and be his Instruments; and this Power was given to *Moses* as the supreme Magistrate, and not as High Priest, for *Aaron* was then High Priest, being before consecrated, *Levit. 8.* Nor was this Right given personally to *Moses*, but as a Law to last for ever. If any allegation be made against *Moses* because he was a Priest, it must cease with *Ioshua* and the Kings after him, who were none; for *Ioshua* by virtue of this ever lasting Law did call an Assembly of all the Tribes, and therefore of *Levi*, to *Sichem*, and *vers. 28.* dissolved it. After him did *David*, call the High Priest, and other Priests, not to consult of any secular affair, but about the removing the Ark; and afterward, *1 Chron. 23. 2.* he gathered together all the Lords of *Israel*, with the Priests and Levites; and as he called them together, so he dismissed them, *1 Chron. 16. 43.* The like did *Solo-*

The Right of calling Assemblies belongs to Christian Kings.

*Joshua. 24. 18.*  
*1 Chron. 15. 4.*  
11.

*moni*



1 Chron. 15.  
2 King. 10. 20.  
2 Chron. 34.  
29, 30.  
2 Chron. 29.

v. 15.

mon when the Temple was dedicated, called the Assembly, 2 Chron. 5. 2. dissolved it, cap. 7. 10. The like did *Asa*, when Religion was restored, and a solemn Oath of association for the restoring of it. *Jehosaphat* did it when he proclaimed a publick Fast, 2 Chron. 20. 3. *Jehu* assembled them, when a solemn Sacrifice was to be performed. *Joash*, in a case of Dilapidations, *Josias*, when the Temple was to be purified, and a mass of superstition to be removed. *Hezekiah* made a law for the Priests and all their brethren to assemble, and in conformity to that law they did assemble; nor was this Assembly for any other thing then to cleanse the house of God, and for the affairs of the service of God, being things meerly spiritual. And since that God hath promised, that Kings shall be nursing fathers, and Queens nursing mothers to his Church, it must be meant of Christian Kings; for this could not be of *Josias*, because he was a King at the time of this prophecy, or before; it could not therefore be meant of him, for the prophecy is *de futuro*, *Kings shall be, &c.* Nor could it be meant of the Kings of *Judah* after him, for they were all Idolaters, and persecutors of Gods Church. It was therefore meant of Christian Kings: And how Kings can be Kings or Supreme powers, without this right, I do not understand: Nor can that saying of our Saviour's causing of wars and distraction, be otherwise reasonably understood, but only where Kings and Supreme powers have not received the Faith. And that Christian Kings did generally exercise this power after they became Christians, we shall shew hereafter.

Who is rightful Supreme Governor.

10. He is a rightful Supreme Governor, who is a Sword-bearer, that is, whom God hath chosen to be his Minister; who hath not taken the sword, excited thereunto neither from any ambitious or spiteful passion or affection, either of himself or other men: That may make, and abrogate Laws, determine all Controversies by himself or such Judges as he shall appoint, choose Magistrates and Councillors, and in whom is the power of making War and Peace. Nor did God give Kings to them only over whom he did reign by Covenant, but also to Heathens who had not known him; as to the *Persians*, *Syrians*, *Assyrians*, &c. he gave *Cyrus*, *Hazael*, *Nebuchadnezzar*, &c. And all antique History speaks only of the Government by Kings; as *Justin* says, *Principio rerum, gentium, nationumque imperium penes Reges erat*; before any other Government was usurped and made by Men.

Who is a Tyrant.

11. He is a Tyrant, who is a Sword-taker; who in stead of executing the wrath of God upon offenders, against all Law kills and murders them who are not of his own faction; who hath no power from God, but only force from the wills of inconstant and seditious men. As *Hos. 8. 4.* says, *They have set up Kings, but not by me; they have made Princes, and I knew it not.* Nor is it the Command of One, which makes Tyranny: The *Grecians* themselves called the Council of the Thirty, after the *Athenians* were subdued by the *Lacedemonians*, the *Thirty Tyrants of Athens*.

Annot. 1.

I am confident there was never any thing so wildly and variously ghesfed at, as the manner how Dominion and Power came into the world, by those men who derive all power from the People originally. *Bodin*, cap. 6. de Rep. p. 46. makes all Dominion to be gotten at first by force; and pag. 46. d. he says, It is very like, that without greatest force and breaking down the Laws of Nature, Liberty could not be taken away. And many men will not distinguish between Force and Power, but only in the possession.

possession. And sure *Athaliah* was as much possessed of the Crown of *Judah*, and as quietly as any King before or after her, for six years; and yet I do not find *Jehojadah* or the people reprehended for restoring *Joash*. And the children of Israel did not rebel, while they could quietly place *2 Chro. 13. 7.* *Feroboam* over them; but *Feroboam* was declared a Rebel, after he was possessed.

12. When they over whom God hath given power, shall submit themselves to that power, this is a rightful Government: When all who owe their subjection, shall accept and receive the Laws of him, who by Right (that is, by Birth, Revelation, Lot, First possession, or just Conquest) ought to command. As the Children of Israel answered *Joshua*; *All that thou commandest we will do, and whithersoever thou sendest we will go: According as we hearkened unto Moses in all things; so will we unto thee; only the Lord thy God be with thee, as he was with Moses: Whosoever he be that does rebel against thy commandment, and will not hearken unto thy words in all that thou commandest him, he shall be put to death.* *Jos. I. 16, 17, 18.*

What is a  
rightful Go-  
vernment.

13. Anarchy is like a vacuum in Nature; so abhorrent, that the World will rather return into Chaos, then suffer it. And therefore *Cicero, lib. 3. de legibus*, says truly, *Sine imperio neque domus ulla, nec civitas, nec gens, nec hominum universum genus stare, nec ipse denique mundus, potest.* 'Tis no wonder therefore if seditious men, when they have put themselves out of power, are glad to submit to Tyranny, rather then be overwhelmed with the Chaos and confusion of Anarchy.

The state of  
Man out of  
power, is Ty-  
ranny.

Yet it is said *Judg. 17. 6. & 21. 25.* *In those days there was no King in Israel, but every man did what was right in his own eyes:* So it may seem that men may subsist in an Anarchy. It is true indeed, there was no man that was King in those days in Israel; nor was there then that absolute necessity of one; for God had given them Property, and did govern the Israelites, and they did enquire judgment of God, who did answer, *cap. 20. 18.* And men did in those dayes commerce and exchange one with another; which is evident by *Micha's* contracting with her Levite-Priest, for ten shekels of silver by the year, a suit of apparel, and his victual, *ch. 17. 10.*

Annot.

14. Princes do transgress their power, when they command any thing contrary to what God hath commanded, or derogatory to the worship and service of God; when they make unjust War; when they pronounce Judgment not according to the declared and known Laws, but punish either by passion, or to please factious men, as in the Earl of *Straffords* Case; or pass sentence against one unheard, as in *Cromwell* Earl of *Essex* his Case.

Wherein  
Princes do  
transgress  
their power.

I say, not punish upon passion, or to please men: For as the state of affairs may be stated, Princes may punish, though not in a Judicial manner; as when Subjects are in Arms against their Sovereign. Nor do I think that any uninterested Casuist will deny, that *Henry* the Third of *France* did justly put *Henry* Duke of *Guise* to death, though not judicially, the Duke having taken Arms against him, and made him flee out of *Paris*, fomented seditions against him, and taken pensions of the King of *Spain* to maintain war in *France*, and become so popular, as the King had no means to proceed legally against him.

Annot.

15. \* The perfection of Government consists first and chiefly, that the Governor have a perfect and indubitable Title, against which no just ex-

\* How careful  
Princes ought  
to be in com-  
manding, or  
making of  
Laws.

ception



ception can be taken. Secondly, that the Governor makes it his chiefest care, that the Religion, or Worship and Service of God be duly administred. And thirdly, that he does endeavor by known and established Laws to administer Judgment and Justice indifferently to his Subjects, with careful moderation of the severity of the Laws, whereas men by no fault of theirs incur the severity of them. And lastly, by all just and due means to endeavor the preservation of his Subjects from the oppression and violence of Foreigners, and to maintain Peace and Commerce with his neighboring Nations. Such was our Government before our unhappy differences; and such by Gods grace do I hope to see it again.

How careful  
Princes ought  
to be in com-  
manding, or  
making Laws.

16. It were a fine may-game to be a King, if Kings might make their Will the rule of their actions. It is true indeed, God hath not in all things commanded Kings what Laws they shall govern their Subjects by: yet this natural law are all Princes obliged to, that their Laws by which they govern do more relate to the good of their Subjects in general, then their own particular interest: And no question but a King commits a more grievous sin doing any unjust thing to any of his Subjects, then if another had done it, in regard of the relations which are between them; as a Fathers doing an unjust thing to his Child, is a greater sin then if another had done it, by how much by the Law of Nature he ought to have done well to his Child, rather then another. Princes therefore by the Law of Nature, in governing, ought to have more respect to the general good of their Subjects, then their own particular interest. Yet is Magnificence a Royal virtue; and therefore ought not the Revenues of the Crown to be parted with, by which it should be maintained: Nor would it conduce to the benefit of the Subjects in general, to make the Revenues of the Crown poor: Where Majesty grows contemptible, the exercise of Regal power is never permanent. Princes therefore ought to have a great care, that by their vices, prodigality of the Revenues of the Crown, remiss governing, or by so giving it over to others that they so much neglect it in themselves, as to make themselves vile and contemptible.

Princes ought  
not to be o-  
beyed, when  
they com-  
mand in dero-  
gation of  
Gods Majesty.  
1 Sam. 12. 14.  
verf. 25.

1 Sam. 15. 23.

17. Though God hath not commanded Kings in all things, what are the Laws by which they shall govern; and therefore divers Kings govern their Subjects by several Laws, as their Subjects differ in nature and manners: Yet hath he forbidden all Kings to make Laws derogatory to his Divine Majesty. *Samuel* therefore threatens *Saul*, as well as the *Israelites*, that if he or they disobey God, and do wickedly, they shall perish both they and their King. And it was to *Saul* that God said, that *Rebellion was as the sin of witchcraft, and stubbornness as the wickedness of idolatry*. Nor was the sin of the *Israelites* in committing idolatry, under the Kings of *Judah* and *Israel*; the less, though the King commanded it: Nor did God scarce ever shew a greater miracle, then in delivering the *Three Children*, and *Daniel*, disobeying the Kings wicked commandment. Princes therefore ought not to be obeyed in commanding things derogatory to the Majesty of God.

Or contrary  
to Religion.

18. Nor ought Princes to be obeyed, when they command any thing contrary to Religion; for, *The kingdom of Heaven and the righteousness thereof is first to be sought*: But the kingdom of Heaven is only to be sought by Faith and Religion. *Daniel* therefore sinned not, when he obeyed not *Darius* in praying to God. Nor do all our Parliamentary Laws add any thing to the

the obligation of mens worship and service of God, in the Unity and Form of the Church of *England*; for men were as much obliged in Conscience before such Laws, as after. Not but that Kings ought to have as great, or greater care of preserving unity and peace in Gods Church, as in their Temporal Dominions; and therefore may punish disturbers of the peace of the Church, as well as the State: Yet when the Temporal Magistrate shall arrogate to himself a power which our Saviour only left to his Church, and make all Ecclesiastical rights and constitutions depending and subordinate to the Civil, whereby the Enemies of our Church have taxed our Religion not for Christian, but Parliamentary; no doubt but it is a crying sin, and I wish there had never been any such thing among us.

19. And as God is to be obeyed before men, in all things which concern Faith and Religion; so in the observance of the Laws of Nature, is God to be obeyed before men. As if a King commands me to dishonor my parents, this can be but a Humane law; but to honor my parents, is a law which God hath written in my heart, and therefore ought to be preferred. If a King commands his Subjects to dishonor him, or to deny obedience to him, this is but a Humane law; whereas by the law of Nature I ought to honor and obey my King: I therefore ought not to obey such a law. *Amurath* the Second of that name, King of the *Turks*, upon a Vow resigned his Kingdom to his son *Mahomet*; yet upon the League made by *Uladislaus* King of *Pole* and *Hungary*, with other Christian Princes against him, he resumed his Regal authority, and so kept it until his death: And so might *Charles* the Fifth, if he had pleased; nor was *Philip* any other then an Instrument of his Fathers, during his Fathers life.

Or the Laws of Nature.

The King makes a Law, giving the succession of the Crown from the right Heir: This ought not to be received; for Princes inherit by a higher Law then Humane.

20. The King commands a Judge to pervert Judgment; the Judge ought to give true Judgment; for all Humane Laws (in peaceable times) ought to be *a priori*, and proclaimed that all men after such a time should observe them. This verbal command of the King wanting this formality, and it being impossible for the Judge to observe both these commands; he ought, notwithstanding this verbal command, to give Judgment according to Law.

Or to pervert Judgment.

The King, when there is no necessity or publick danger, commands me who am no publick Executioner, without any Judicial sentence to put a man to death, for which he can make no compensation: As *Dauids* commanding *Joab* to murder *Uriah*; although we find *David* only reprehended and punished therefore, yet sure if *Joab* had not fulfilled *Dauids* wicked command, he had not sinned.

Quere.

But you may object, Who shall judge whether this thing commanded be repugnant to Gods Majesty, Mans faith, Religion, or the Law of Nature; the King, or the Subject? I say, though the Subject hath not an equal right of judging with the King, whether this thing should be a Law, or not; yet every Subject hath a Conscience, as well as the King, which must dictate to him whether he ought to do, or not to do such a thing.

Whether Kings divest themselves of Regality, by commanding what they ought not.

21. But if the King commands things contrary to Gods Majesty, and Divine Laws, ought he not to be obeyed in those things which do not contradict them? It is so mad and wild an objection, as it is scarce worth an

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answering;



answering; unless a man will affirm, that my doing of an act which I ought not to have done, does divest me of Humane nature; or that a Fathers or Masters commanding his Son or Servant what he ought not, doth annihilate the relations of Father and Son, Master and Servant; or that Humane acts may dissolve Humane relations. A Prince therefore ought to be obeyed in those things which he ought to command as Prince, although he command such things as he ought not.

Though inflicting punishment for not observance.

22. It may be it will be objected, That Temporal punishments being the usual concomitants for not observing Humane Laws, a good and conscientious man may be punished for what he ought not to have done. I say, his case is the same with his Lords and Saviours, and all those blessed and glorious primitive Christians and Martyrs, who suffered for the testimony of a good conscience. Nor hath God made Heaven so easie a prize, that it should be always won easily and delicately, but many times by suffering and martyrdom.

Whether Princes ought to be resisted, where they are not to be obeyed.

23. It is the most usual thing with seditious men, before they enter into open sedition, to prepare mens mindes with certain Cases, wherein Princes commanding things derogatory to Gods Honor, or the Subjects Liberty, that then in the preservation of themselves, and Gods honor, they ought to defend themselves from the raging Tyrannie of Princes; and to be sure, that whatsoever they command, these good men will judge contrary to Gods Honor, and the Liberty of the Subject.

It is worth the while, if a mans patience will give him leave, to look back upon the thing calling it self *Parliament*: how after they had made the King grant whatsoever they could think might be beneficial to the Subjects, (though I might be sworn they never intended (as plainly appeared afterward) the good, benefit, or liberty of the Subject;) what pious ways they invented to make themselves great, and so good a Prince nothing, and odious to his Subjects: As the demanding of six men, holding intelligence with his Subjects who had been in open hostility and rebellion against him, (an affront not to be endured by any King) to an ordinary and Legal Trial; this was not only denied, but Voted a Breach of the Priviledge of Parliament; whereas the Priviledge of Parliament extends not to so much as breach of the Peace, much less to Treason. They pretend (though most falsely) that in case of extreme danger and necessity, the *Militia* is in the Parliament, meaning themselves, excluding the King: And then create Dangers, and write Letters how great Fleets of *Danes*, *Suedes*, *Hollanders*, &c. were seen at Sea; (It must be from *Westminster* then, for there were the Letters written, and the Fleets never since heard of.) Then, permit, if not command the most insufferable affronts and indignities that ever were offered to Majesty; yet if the King but offers to increase his Guard, this is Voted no less then a raising of War against his Parliament and Subjects: whilst all the while, against the *Lex & consuetudo Parliamenti*, without any cause moving them, they maintain an illegal Rout of men for their Guard, and go armed themselves. Nay, what needs a man instance particulars: All the Kings commands in prosecution of the Laws, were Voted breaches of the Priviledges of Parliament, and the Liberties of the Subject. We will therefore shew that this Assertion is not only contrary to all Faith in both Testaments, but also destructive to all Humane Society.

Inst. par. 4. 14.

23. There

24. There is no man sure will deny, but that *Saul* did unjustly persecute *David*, with an intention to take away his life: Yet when *David* might twice have resisted *Saul*, and taken away his life, 1 Sam. cap. 24 & cap. 26. he refused to do it; and the reason was, because he was the Lords Anointed; And who can lay his hand upon the Lords Anointed, and be guiltless? Or. *Nebuchadnezzar* King of the *Assyrians*, not only destroyed the land of *Palestine* with fire and sword; not only destroyed *Jerusalem*, laying it level with the ground, burnt the Temple, carried all things consecrated and dedicated to Gods service, to *Babylon*, converting them to prophane uses; not only killed their King, carried the Jews themselves into most miserable servitude, but also to the contumely and dishonor of Gods Majesty, erected an Image to be divinely adored, upon no less penalty then to be thrown into the fiery furnace: Yet were these most holy men, *Shadrach*, *Mesbach*, and *Abednego*, so far from resisting the King, though they could not obey him, that they patiently submitted themselves to the furnace, made seven times hotter for their sakes; and the blessed men were so far from seeking revenge, that upon Gods denouncing judgment to *Nebuchadnezzar* in a dream, *Daniel* (whose mischief was no whit less intended) prayeth that the dream might be to them who hate his Lord, and the interpretation thereof to his adversaries. Far unlike to the spirit of *Calvin*, who commenting upon *Daniel*, makes Kings to divest themselves of all power, when they command in dishonor to God; and to spit upon their heads rather then obey them; &c. And though *Nebuchadnezzar* were so wicked, yet being a King, Gods calls him his servant.

To resist Princes; though commanding unjustly, is contrary to faith in the Old Testament.  
1 Sam. 24. 6.  
cap. 26. 9.

Dan. 3.

Jer. 25. 9.

25. *S. Peter* teacheth, that it is thankworthy, if a man for conscience towards God endure grief, and suffer wrong undeservedly: For what praise is it, if when we be buffeted for our faults, we take it patiently? But if when we do well, we suffer wrong, and shall take it patiently, then is there thank with God. For herunto were we called; for *Christ* also suffered for us, leaving us an example that we should follow his steps, who did no sin, neither was guile found in his mouth; who when he was reviled, reviled not again, when he suffered, he threatened not, but committed the vengeance to him that judgeth righteously. What more plain lesson can be given to Christians to suffer, and not to resist Princes, for the testimony of a good Conscience? And if ever man had just cause to resist, then had our Saviour, and *S. Peter* in his defence; yet would not our Saviour allow it, but tells him, that who so takes the sword, shall perish by the sword.

Against the faith of the New Testament.  
1 Pet. cap. 2.  
19, 20, 21, &c.

Mat. 29. 32.

26. That which I as a private man may assume to my self as a man, is due to another as a man; otherwise it were a great arrogance in me, to allow that to my self, which I condemn in another. But if I may ascribe to my self a power of judging when I may resist my Prince, then ought I to allow it in another; and so by consequence, every man should have a power of judging how long he shall continue in obedience, and not resist his Sovereign. Now what Society there can be, where any man may make himself free from all Humane Laws (without which there can be no Society) and resist them when he sees occasion, (for where men may resist, there can be no subjection) let any man judge. Nay, where men did ever ascribe to themselves a right or power of resisting their Sovereigns, they did never stay there, but made all the unjust usurpation and hostile invasion they could upon them who continued in obedience to their Prince: And what Law of God,

Destructive to all Humane Society.

or



or Man, or Rule of Society, gives me a liberty to kill and murder innocent men, because I have sinned in resisting where I ought not. By our Country-Laws, if a man assaulted another, who goeth back to some hedge, ditch, or wall, &c. beyond which he cannot pass, and then in his own defence kills the assaulter; yet such a tender care had the Common-Law of a mans life, that though this were done by inevitable necessity in the preservation of an innocent mans life, that he should have suffered death therefore: And though by the Statute of *Glocester* he shall save his life, yet he shall forfeit his goods and chattels. Nor is this damnable opinion of resisting Princes, less destructive to other men then the Assertors: For why may not any man do that to them, which they of themselves have done to their rightful Sovereign, and his obedient Subjects?

*Inst. 3 par. p. 55, 56.*

Wherein Princes commanding unjustly, ought to be obeyed actively.

27. It is *Humanum errare*; Fallibility is concomitant with humane nature: And no doubt but Princes, being men, are subject to humane frailty. Yet as Humane Laws will admit of (although not intend) a mischief to particular men, rather then endure an Inconvenience; so the Laws of Nature will admit of many things contrary to Nature, rather then endure a Vacuity. I say therefore, that there are many things so inherent in the Prince individually, that they are incommunicable to any other: And therefore the Prince offending herein either through humane frailty, or passion; yet if he command unjustly, the sin is his in so commanding, and not the Subjects in obeying. As if a Prince makes unjust War, yet if the Subject obey him, it is not the Subjects sin in obeying, but the Princes in making such a War: For if Subjects might judge whether a War were justly undertaken, or not, and so be freed from his obedience, when he would judge it unlawful; then any, or all Subjects, either through fear or faction, might desert their Prince in any War, and so the Prince left destitute of protecting himself or Subjects; whereas *Salus populi est suprema lex*; and of this is the Prince the sole and individual Judge. If Princes give unjust Judgment, the Executioners of Judgment ought to execute the Sentence although unjust; for they are not obliged to take notice of the Injustice of the Sentence, but of the Sentence. The A<sup>d</sup> of Parliament against *Cromwell* Earl of *Essex* did oblige, although unjust; he being in peaceable times, without any urgent necessity, condemned unheard; yet was it no sin in the Executioner to execute it.

*Inst. 4. par. 37.*

What is Monarchy.

28. Monarchy is, where the Empire or power of governing is in one Person, from whom all Humane Laws, Magistracie, and Protection of Subjects is to be expected.

What is Hereditary Monarchy.

29. Hereditary Monarchy is, where this Right, Title or Empire descends to the Heir General, or Male; and this latter is proper only to *France*, and that by a pretended *Salique* Law.

No Prince can give, sell, or transfer his power.

30. *Delegata potestas non potest participari*: No man can participate, much less alien the power which he is intrusted with: But supreme power is delegate from God to every Prince; and therefore no Prince can give, sell, or bequeath his power to any other. The King is Gods Lieutenant upon earth, *Coke 3 par. Inst. cap. Deodands, fol 57.*

Elective Monarchy.

31. It may be the Electors are the Instruments by which the Elected King or Monarch receives his power; but I do not understand how such a King can be a Supreme Prince. Yet this by the way: Neither now nor heretofore was ever such Prince chosen either by the people in general, or by the Masters in families, nor the Electors chosen by them.

32. A-

32. Aristocracy is when a company of men met in Council, ascribe to themselves whatsoever power is due to any rightful Monarch, not being chosen by the people in general, but have places either by birth, or as they are chosen by the Council, such is the state of *Venice*, such were the *Roman Senate*, and *Ephori* of *Lacedemon*. Aristocracy.

33. Democracy is, when they who being free of the City, do meet at a time and place appointed, where they choose Ministers and Officers, make and alter laws, and do whatsoever they think good, or what shall appear good to them, as represented to them by popular Orators: But because business might so fall out, that there might be a necessity of making War or Peace, raising money for defence of the Commonwealth, &c. besides the times and places appointed, the *Athenian Archon*, and *Tribunes* of the *Roman* people had liberty given them to assemble the people when they thought fit: I think no man can well tell whether the *Roman* Government before *Casars* dictatorship were Democratical or Aristocratical: For though men might appeal from the Consuls to the Tribunes, yet by an Act of the Senate after the suppressing of the *Gracchi*, the Consuls might provide that the Commonwealth should receive no detriment, which is as general and high a power as can be given: No wonder then if *Marins* pretending the power of the Commonwealth, and *Sylla* the authority of the Senate, should reduce both *Rome* and Senate to so lamentable a condition; and that *Julius Cesar* assisted by *Lucius Antonius* and *Quintus Curio* the Tribunes of the people, and *Pompey* by the Senate, should raise such War and commotion every where, to the utter subversion of the absolute power (as they called it) both of Senate and people. Democracy.

## CHAP. IV.

### *Of the three Species of Government, viz. Monarchy, Aristocracy, and Democracy.*

1. *Imperium est duplex, solum legibus, and ascriptum legibus*; this is Empire restrained to the Laws, and is of Magistrates, who although they command private men, yet they themselves are bound by the laws and command of their superiors, which is the power of our Judges, Justices, &c. That is Majesty, an Empire, which is the Arbitrator, Moderator, Controuler, and maker of all laws, and who justly has it, is accountable only to God: and this Empire is so essential to all Government that without it there can be no Kingdom or Commonwealth; there cannot be any property, any *meum*, or *tuum*, but what this Empire gives; no man has any security of his life or estate, but as he is preserved and protected by this power or command: And though government do differ (as it hath been and yet is in many places of the world) in specie, viz. Monarchy, Aristocracy, and Democracy, yet in all of them this power or command is the same and equal, viz. Supreme: And this power or command must be in one thing, viz. in one man, in one court, in one people; but if it be divided into two or more, it is either *supervacaneous*, or *destructive*; for those two or more

There are but 3 species of Government, and all compounded Government, is either supervacaneous or destructive to the Governors and Governed,



in whom this divided Empire does consist, must either agree or disagree in the same thing; if they agree to will or nill the same, then it is *supervacaneous*, for it had been all one if but one part had willed it; and *frustra fit per plura, &c.* but if they disagree in willing or nilling the same thing, it is destructive, for it is impossible for the Subject to obey, because the Law it self is a contradiction; and if the Subject obeys one, he disobeyes the other, and to obey neither brings *Anarchy* and confusion upon all the governed: What is left then but the Subject to be divided, as well as the power? and a Kingdom divided in it self cannot stand, *St. Mar. 3. 24.* Neither are the Governors, in whom this divided power or command does consist, in any better case then the Subject; for,

Lucan.

*Nulla fides regni sociis, omnisque potestas  
Impatiens consortis erit.*

It were infinite to enumerate the sad consequences which division of Kingdoms have brought upon those Kingdoms where they were made; Let any man look upon the Estate of the *Roman Empire*, when it was divided by *Constantine the Great* among his three sons, *Constantinus, Constantius, & Constans*. Nor did ever the Empire retain the name and dignity, after the division made by *Theodosius* to his sons *Arcadius* and *Honorius*. Nor was the *Western Empire* ever raised again to near the greatness it had in *Charlemaine's* time, after the division made by *Lotharius, Lewis, and Charles*, sons of *Lodovicus Pius*; and what horrible confusions followed upon the divisions, is easie to be imagined, whenas in the first Battle between the brethren, was slain the greatest part of the Nobility of *France*, and more men died in it then in any other battle that hapned in *France*, since that fought between *Ecius* and *Attila* King of the *Huns*, in the fields of *Catalonia*.

But that we may not go so far, and yet find examples neerer home, *Rodry Maure*, or *Rodry* the great King of *Wales*, Son of *Mersyn Frith*, had issue three Sons, *Mervin, Anarawd, and Cadell*. In the yeare when he dyed viz. anno. dom. 877. (King *Alfred*, alias *Alured* then reigning in *England*) this Great *Rodry* divided his Kingdome of *Wales* into three Principalities. The First he called *Guyneth*, the English *Northwales*, the Latine *Venedotia*. The Second Principality was called *Powisland*, in Latine *Powisia*, of some *Westwales* bordering upon *England*. The Third he called *Deherborth*, the English *Southwales*, in Latine *Demetia*. The First Principality, some say he gave to *Mervin*, others to *Anarawd*. The Second to *Anarawd*, some say to *Cadell*. The Third to *Cadell*, some say to *Mervin*. The First was the best because it was quietest. The Second often invaded and troubled by the English. Into the Third often incursions were made by the English, the Norman, and Fleming. The division of this Kingdom (however it was) wrought in process of time, such a division between these Princes, as it was never quiet untill it came under one Monarch or King again: for the Royal dignity of a Monarch or King, from whence all subordinate dignities, *tanquam lumen de lumine*, are derive, without any diminution, will suffer no division, *Regia dignitas est indivisibilis, & qualibet alia derivativa dignitas, est similiter indivisibilis*.

The most woful event that fell out in this Kingdome, when *Gordabug* divided this Kingdom between his two Sons, *Ferrex* and *Porrex*, and what heavy

heavy event came to pass, untill it was reduced again under one Monarch, let our Histories tell you; and letting pass others, I cannot overpass the miserable estate within this Kingdom under the Heptarchy, untill all was reunited under one Sovereign, and this is the reason that in *England, Scotland, and Ireland*, the Royal dignity is descendible to the eldest daughter or sister, *Æt. Regia dignitas est indivisibilis.*

Sir E. Coke  
Inst. 4. 243.

2. Of these Governments Monarchy is the best, as appears by reason, by the consent of the world, by the institution of God, and his commanding obedience only to this Government, and by woful experience.

How many  
ways Monar-  
chy is the best  
Government.

3. Monarchy in reason is the best Government, for the dignity and majesty of one man is more easie to be maintained then of many; The ills that follow from bad Monarchs, are no worse than what do and alwaies did happen from the best of humane Laws, *viz.* mischiefs to particular men; Nor can the mischiefs which happened to *Silus, Sabinus, Sillanus, &c.* (who not well brooking the powers of *Tiberius* and *Caligula*, Emperors as bad as who were worst) had been over-lavish of their tongues in vilifying the power of the *Cæsars*, and magnifying that of the *Senate*, and probably had they been able, would have advanced the power of the *Senate*, to the abdication of *Cæsars*) be compared with the inconveniences which came upon the *Senate* and people of *Rome*, in those times of *Silla*, and *Marinus*, of *Cæsar*, and *Pompey*: Besides, factious and discontented persons cannot hope for that encouragement in their designs, where the supreme power is in one individual person, as where it is compounded of many. The freedom and liberty of the Subject is more under one, then more, for it is easier to obey one then many: The common people of *Rome* never enjoyed so much liberty as under the Emperors; and therefore when after the death of *Caligula*, the *Senate* endeavored to restore *Rome* to her ancient liberty as they called it, and extinguish the name and power of the *Cæsars*, and to that end had seized upon the Capitol, they, aided by the *Preterian cohorts*, continued the power of their Emperors, in *Claudius*; and the day and night wherein the *Senate* would not receive him, was the cause of much trouble, which *Josephus* notes, l. 19. c. 30.

Sueton. in vita  
Claud. cap. 10.

4. By the consent of the world; for every where in the known world before 1641. either in *Europe, Asia, Africa, or America*, over Christians, Mahumetans and Infidels, (except the State of *Venice*, the usurped power of the Cantons in *Switzerland*, the State of the *Neatherlands*, the *Hans-towns*, *Genoa* and *Geneva*, who seek protection of the Emperor and Kings of *France*) this Government is established.

By the con-  
sent of the  
world.

5. By God himself; for he never instituted any Government either in Priesthood, Judges, or Kings, but only this, nor commands obedience to any other. *Can a man touch the Lords anointed and be guiltless? 1 Sam. 26, 9. And submit your selves to every ordinance of man for the Lords sake, whether it be to the King as supreme; &c. St. Pet. 2. 13. Feare God, honor the King: And I counsel thee to keep the Kings commandments, and that in regard of the oath of God: And therefore what thing an Unite is in numbers, the Minde in the faculties of the soule, a Centre in a circle, the same is God the most omnipotent King in the world, simple in unity, indivisible in nature, most holy in purity, placed by an infinite interval far remote above the fabrick of the highest Heaven; joyning this perspirable region with the celestial and intelligible, keepes and preserves from ruine, as by a secure care, the whole*

By Gods  
owning it  
only.

R

universe.



universe, framed and compounded in such admirable order and harmony, to whose great example ought every good King ( who is the Unite, the minde, and centre of his kingdome ) that hopes to govern and preserve his subjects not only safe, but honest and happy, wholly to betake himself.

By wofull  
experience.

6. By wofull experience : I do not find any mans life, ( except the destitute and deposed Princes, *Arthur*, *Ed. 2.* *Rich. 2.* *Hen. 6.* and his sonne, *Ed. 5.* and his brother ( herein, and in many other things doubtless more unhappy then private men ) and the Duke of *Clarence*, after conviction and attainder, thought by the consent of *Ed. 4.* to be drowned in a Butt of Malmsey, and *Cromwell* Earle of *Essex*, condemned and executed unheard in Parliament ( see a remarkable passage herein by Sir *Ed. Co. Insti. 4. fo. 37. 38.* ) Queen *Katherine* fifth wife to *H. 8.* Mary Queen of *Scots*, and the Earle of *Strafford* ) or estate, taken away by any of the Kings of *England* for these last 500 years in an extraordinary and extrajudicial manner. ( It the dissolution of the Abbies by *Hen. 8.* be objected, I answer, it was usual in Parliament, to alter many things in the Common law : as the statute *de donis conditionalibus*, made a great alteration in the Common law ; for before, all estates which were not for life and under, were either in fee absolute or conditional ; and so the Statutes which gave power of entry, where before no remedy was to be had by Common law, but by a *Cui in vita* : And to Jointenants to compell others to sue a Writ of partition, &c. In case of life, the ordinary way of trial was by Peers, the Nobility by the Nobility, and the Commons by the Commons : but a Parliament being a body compounded of heterogenial and dissimilary parts, viz. King, Lords, and Commons, could not be Peers to any man, which was the usual way of Trial with us ; neither were the Estates so taken from Abbots, &c. but that they enjoyed them, or a full value in lieu of them, during their lives, so that by this act no wrong was done to any man living : Yet it is true which Sir *Ed. Co.* saies in his Comment upon *Magna charta*, chap. 1. *Quod datum est Ecclesie, datum est Deo*, what was given to the Church, was given to God ; which by the Law of God, *Numb. 16. 37. 38.* is unalterable, nor can be employed to any profane or common use. ) So that I am confident, I may safely affirm, that the Subject in seaven years under the Long Parliament suffered extraordinarily and extrajudicially, five hundred times more, then all their Ancestors in 500 years before, did from their Kings : The *Birons* warrs and those of *York* and *Lancaster*, *Wat Tyler*, *Jack Straw*, &c. were caused by the rebellion and stubbornness of the Subject ; nor is the sacred patrimony of the Crown and Church more secure then that of private men, but invaded and made a prey to soldiers, Sequestrators and Excise-men.

(a) Hereditary Monarchy is better than elective in relation to the Subject. For the Antiquity of this Government, even among the Grecians. see *Thucid.* 2 ed. by H. Stephanus, 1588. p. 10. Περὶ τῆς εὐνομίας καὶ τῆς πολιτείας. Before that time (viz. Trojan War) Kingdoms were hereditary, and confined to certain honors.

7. Hereditary Monarchy is better then Elective, in relation to the Subject. If a man but considers the calamities brought upon the *Roman* Empire, only by choosing their Emperor, it were sufficient to make any man fear and tremble ( that hath so much compassion in him as to pity wretched States ) for that Nation who choose their King. When *Casars* line was extinct in *Nero*, *Galba* was scarce chosen and received Emperor, when *Otho* excites the Pretorian Cohorts to kill him and his adopted son *Piso*, to make way for himself. *Vitellius* is chosen almost at the same instant by the German Legions, that *Otho* was chosen by the Pretorian Cohorts : By this division the Empire is brought to so desolate a condition, that *Otho* ( a vicious man ) did kill himself, to prevent its further destruction ; yet could

could not *Otho's* death purchase his Countries quiet: For, the *Mælian*, *Pannonian*, and *Dalmatian* Legions, ascribe to themselves as good right in choosing an Emperor, as the *German*, and name *Vespasian*. Rome the Mistress of the known World, never felt such misery, as those Legions led by *Antonius Primus* brought upon her; which *Cornelius Tacitus*, in the latter end of the third book, and the beginning of the fourth book of his History, relates. That Emperor the Soldiers chose, scarce ever pleased the Senate; what Emperor the Senate chose, never pleased the Soldier. From *Marcus Aurelius* to *Dioclesian* (who was the greatest Persecutor of the Christians, and renounced the Empire to take upon him a private life) not one Emperor of ten died a natural death. In *Gallienus* his time, Thirty at once; at no time less than three or four, but like *Hydra's* heads, when one was cut off, another sprung up: Into such a condition was the Empire brought by the Election of the Emperors. Nor was the state of the Western Empire much better, which he who reads the History of those times from *Charles* the Great, until the Constitution of Pope *Gregory 5. Anno 1002.* for choosing the Emperor, (*Otho* the Fifth not contradicting it) may see, which hath continued till this day: Yet the Electors considering the confusions caused in the nominations of their Emperor, have ever since *Rodolphus* the First, who was chosen *An. 1272.* continued their election in the House of *Austria*; so that upon the matter, the Empire is become hereditary, and the choosing but a Ceremony.

*Platina vita. Greg. 5. 151. b.*

7. The miseries consequent upon the election of either Native or Stranger, are many: For there is no Native, who is not in distaste with some body; the choosing of whom gives power to take revenge not only upon him, but those that opposed him in his election; for it is hardly imaginable, all should agree in one. None of the rejected Competitors will be content to acknowledge the Elected; in stead thereof they will rather study ways to raise dissention about the manner of the Election, that either undue means were used in it, or though they had the fewer Votes, yet they who voted for them, were greater, better, or more Saint-like, whose Votes ought rather to be weighed, then the others numbred. These, it may be, and many other considerations have caused the *Polonians*, these many years, to look for him whom they choose their King, out of *Poland*.

The miseries consequent upon the Election of a Subject.

8. Let us see what the miseries consequent upon choosing of a Stranger are. He who is chosen, is either a Subject, or a Sovereign, (for between these two is no mean:) If he be a Subject, who (especially freeborn Sovereign people) will endure that another being a stranger, and a Subject too, should command over them? And where power is despised, the exercise of it is never permanent. If he be a Sovereign, he having now two Kingdoms, can personally reside but in one, which will disgust the other: It will be expected, that he observe the manners and dispositions of this Kingdom more then his other, because the people chose him; It will be expected by that Kingdom, that he retain the observations of the dispositions and manners of it, because he is their born King. *Philip* the Second did disgust the *Flemings*, because he retained his Spanish habit. He cannot do any thing so much in order to the good of the one, but it will as much excite the other to hate him; in being a servant to both, he shall please neither. And what was it which caused all those Wars raised in *Bohemia*, but the Election of *Frederick*, 1619. from whence too sprung all those devastations, and almost

The miseries upon the Election of a Foreigner, be he King or Subject.



destructions in *Germany* since, until the last Treaty at *Munster*. From hence it was, that *Sigismund* the son of *Fohn* King of *Sweden*, being chosen King of *Poland*, the Kingdoms differing both in Manners and Religion, (and it being impossible to please both) was not only himself, and all his posterity for ever excluded from the Kingdom of *Sweden*, in a Conspiracie at *Lincopen*, 1600. but hath been the cause of all that misery and desolation under which *Poland* lately lay: For, because *Casimir* the son of *Sigismund* will not renounce the Right which God by Primogeniture has given him, and acknowledge this *Barbarian* and *Usurper*; he joining with the *Brandenburger* and *Transilvanian*, (and seeks aid of the *Turk* too, who being the best Christian of these four, refuseth to give him any) robs, ruines and spoils *Poland*. Add hereunto the calamities and confusions which happen in the intervals of their Kings; which who so reads the History of *Pole*, may see: Whereas in an Hereditary Kingdom, where the Heir is known and a Major, no confusions probably follow: And no man sure will deny, but that an Hereditary Monarchy is better for the peace and quiet of the people, then an Elective.

Hereditary Monarchy is better then Elective, in reference to the Crown and patrimony thereof.

9. Hereditary Monarchy is better then Elective, in relation to the Rights, Patrimony, and Dignity of the Crown: For where the Crown descends to the Heir, the King will use what means he can for the advancement of the honor and dignity thereof, that himself in his posterity, as well as his person, may be great and renowned: whereas he who cannot hope that his Heir shall enjoy it, will use what means he can for provision and maintenance for his Children, although it be to the prejudice and dishonor of it; for sure no man can imagine, that because a Man is a King, that therefore he should divest himself of Nature, and neglect to use some means to get an Estate for his Posterity, where there is none provided? If it be objected, that the Crown descends to the Heir, not to the posterity, if more then one: I answer, That no Crown but hath many Offices and Dignities appertaining to it, which descend to the Heir, he probably will not reject his own flesh and blood to advance strangers; whereas in an Elective Kingdom it cannot be hoped for.

The Government of Britain was ever Monarchy Hereditary, before 1641.

Essex and Middlesex.

Plat. in vit. S. Eleutherii, p. 21.

10. The Government in *Britain* and *England*, untill 1641. was Monarchy hereditary: If you believe *Mr. Selden* in the First Book cap. 1. of his *Analecton Anglo-Britanicon*, he will tell you (upon the Faith of *Jeoffrey* of *Monmouth*) the stem and progeny of *Brutus* the Nephew of *Aeneas*, and give you a series of the Government of his posterity to *Cassivellanus* King of the *Trinobantes*, when *Cesar* first made his invasion here, and cap. 5. from *Cassivellanus* to King *Lucius*: Now I trowe our Author for the honor and reverence of the Apostolick see, will not deny *Lucius* to be a King, and the first Christian King of the *Britaines*, who, and whose subjects were baptised about anno 176. by *Fugatius* and *Damianus*, sent to this end by Pope *Eleutherius*: And see *Tacitus Lips.* pag. 457. in *vita Agricola*, li ( *Britanni scilicet* ) his atque talibus invicem instincti, Voadica generis regii femina duce ( neque enim sexum in imperiis discernunt ) sumserunt universi bellum, &c. with these and the like speeches, inciting one another, by common consent they resolve to armes, under the conduct of *Voadica* a Lady of the blood royal, ( for in matter of governing in cheif, they make no distinction of sex. ) It is not my purpose here to relate a series and Catalogue of all the *Brittish* Kings to the *Saxon* Monarchs, nor of the *Saxon* to the *Dane* and *Norman*;

I deny that in any of these times, there was any other Government but Monarchy, (Aristocracy or Democracy never) nor was ever any of those Kings chosen by the people.

Here by the way, though I affirm the Government of England and Brittain to be Monarchy, yet I do not affirm, that part of this Island which is called *England*, was governed by one Monarch only, till King *Atheftan* reduced it about the yeare 938: nor the whole Island under one King, before it was united under *James*, anno, 1602. And this Monarch not a thing in abeiance, an aiery title, but an absolute, free and independent Monarchy. Stat. 24. H. 8. cap. 12. *It is resolved and declared, that by sundry and old antick Histories and Chronicles, it is manifestly declared and expressed, that this Realme of England is an Empire, and so has been accepted in the world.*

Publick Notaries made by the Emperor, claimed *de Jure*, to exercise their office here in *England*, but were prohibited, because it was against the dignity of a supream King; see Sir *Ed. Coke*, *Instit.* 4. fo. 342. *Omnis sub rege, & ipse sub nullo, sed tantum sub Deo*; And *ipse autem Rex non debet esse sub hominibus, sed sub Deo*: And *Rex autem qui vicarius summi Regis est & ad hoc constitutus, ut regnum terrenum & populum domini, & super omnia sanctum veneretur ecclesiam ejus & regat, ab injuriis defendat, & maleficos ab ea evellat, & destruat, & penitus disperdat*; *ibid*: Now would I fain know, what higher power can any man upon earth claim, then is here by the Law acknowledged to be in the Kings of *England*.

Nor hath any Subject any property in his estate, but what he claims from the King; for all Lands and Tenements in *England*, in the hands of Subjects, are holden mediately or immediately of the King, Sir *Ed. Co. Com. on Lit. fol.* 1. & *Inst. part.* 4. pag. 363, 364. Nor have the Lords and Commons a concurring power with the King in making Statute-Laws; for the King makes the Law, the Lords and Commons consent, *Co. Lit.* 159. b. And what concurring power of Lords and Commons is there in *Magna Charta*, but only, *Henry by the grace of God King of England, &c. We have granted to God, and by this our present Charter have confirmed for us and our heirs for ever, &c. And Charta de Foresta hath nothing which makes it a Law, but, Edward by the grace of God, &c. We will that all Forests &c. Stat. Hibernia, made at Westminster 9 Feb. ann. 14. H. 3. Henry &c. commands that the Customs recited in that Statute and used in the Realm of England, be proclaimed in Ireland, and straightly kept and observed there. And Stat. de Anno Bissextili, made at Westminster. ann. 21 H. 3. ann. 1236. is, The King unto his Justices of the Bench, greeting. The Statute entituled, *Assisa panis & cervicie*, is made by the King. The Statute *de Scaccario*, is nothing but what the King commandeth. And so let any man peruse all the antient Statutes of this Realm, and he shall not find any so much as Consent of the Lords and Commons named in the making of them, though it may be it was implied. Nor had the Lords and Commons in the Parliament Anno 1641. any more power *de jure*, then their Predecessors had before them. And therefore the Common-Law and Statute-Law of this Realm were nothing but the declared Will of the King: Nor hath any City or Borough, &c. any Priviledge, but what they claim and hold immediately from the Kings Grant.*

*Customs* I take to be those Usages, which the Kings have permitted to divers of their Subjects, in several places of this Realm, time out of mind, distinct

Sir *Ed. Co. comment. on Littleton.* 115



distinct, and not the same with the Common Law. And herein they differ from *Prescription*, because this refers to the person, that to the place: so *Prescription* is, what such an individual Man and his ancestors have done in such a place; and *Custom* is, what divers Men at once have used in such a City, Borough, Mannor or Village.

Add hereunto the *Militia* of the Kingdom, the *Mint*, the power of making War or Peace, which were always in the King, and for the managing of which, he hath usually taken the Results of his Ordinary Council, and who will deny the Kings of *England* to have been Absolute Sovereigns? What the Government since 1641. hath been, I cannot tell, nor do I care: If you believe the *Instrument*, it will tell you, *It is in One Person, and the Freeborn People of this Nation*; so in Two, and divided. But who are the *Freeborn People of this Nation*? Every man hath as much right to this Freedom, as another; here is no Vassalage, no *Civitate donatus*, in one more then another; so here all are Governors. Now Government being *ways 2*, in the predicament of relation, This *One Person* and *Freeborn People* must forgive me if I do not understand it.

Democracy  
the worst of  
Governments.

11. Now if *Monarchy* be the best Government, then *Democracy* is the worst, because most different from it. He that will look further into the inconveniences of Popular Government, let him read *Hobbs de Cive*, cap. 10.

The woful  
estate of men  
in Aristocracies.

12. The woes pronounced by God to that Kingdom *whose King is a Child*, *Pro. 8. 15, 16. Isa. 3. 4.* are as much or more to be feared in an *Aristocracy*: For why may not Great men as well agree where the King is a Child, as where there is no King at all? If any of these Governments be monstrous and usurped, This, and *Democracy* are; for God never instituted any such, nor ever commanded any obedience to either: nor was there ever any but originally were introduced by unjust violence and usurpation. It is therefore just with God that they who would not be content to be governed and protected by his Ordinance, should be perpetually obnoxious to Seditions, Conspiracies, and liable to serve many Masters, and always liable to pay Soldiers wages to force them to perpetual slavery and poverty. Under bad Kings, innocent Subjects are protected from the Ambitious; and their Tyranny extends usually to Courtiers, and those who would unjustly usurp dominion over their Fellow-subjects: Whereas bad Governors in States and Popular Governments, bring unavoidably confusion and ruine upon the Governed in general.

Object.

I do expect to have the State of *Venice* opposed to this assertion of all Democratical and Aristocratical Governments being originally usurped.

Sol.

But if it be true (as we shall hereafter demonstrate) that subjection of Subjects to rightful Princes does depend upon higher then any humane or voluntary causes; And therefore it was truly resolved by all the Judges of *England*, That Natural Allegiance is not circumscribed to any place: Then (although the Empire was much rent with divisions) could not the *Venetians*, although driven by the fury of *Attila's* excursions, into those Isles of the Adriatique sea, where *Venice* now stands, for their preservation, free them from their obedience and subjection due to *Valentinian*; nor without usurpation and wrong to him, could they erect themselves into an Aristocracy.

Calvins case,  
tit. 4. page 7.

13. Perfection consists in Integrals; and where any thing is not made up of all the parts of it, there that thing is deficient and imperfect: But the Government of Aristocracy and of Democracy does not consist of the whole part of the Men governing, but of the major part: The Governments therefore of Aristocracies and Democracies are deficient and imperfect Governments.

Aristocracy and Democracy are imperfect Governments.

*Socrates asks Euthyphro*, Whether in every action, one and the same thing be the same thing to it self, pious or holy? and in like manner, Whether an impious or profane thing, plainly contrary to an holy thing? *Euthyphro* assents to it. *Socrates* bids *Euthy*. define what is holy, what profane: *Euthy*. defines *holy*, to be the doing the will of the Gods; and *profane*, to do contrary to the will of the Gods. *Socrates* asks *Euthy*. Whether the Gods had all the same will? and whether it were true which the Poets, Painters, and Preachers report of the Gods, that there was war, great counterfeiting, and fights among the Gods? *Euthy*. confesses it, and more marvellous things which the common people were ignorant of. *Socrates* asks *Euthy*. If a holy thing be grateful to God, and a holy man be acceptable to God, whether holy and profane can be the same thing? or whether they be not plainly contrary to one another? *Euthy*. confesses it. *Socrates* asks *Euthy*. if the controversies, wars, and dissensions among the Gods, were concerning things just and unjust, good and bad, honest and dishonest? *Euthy*. confesseth it. *Socrates* asks *Euthy*. Whether in all matters of controversy, men must not have recourse to some certain Rule, to which with an indifferent mind they must submit? *Euthy*. confesseth. *Socrates* asks *Euthy*. Whether they might not have recourse to the will of the Gods, whether that thing and controversy between them were good or bad, just or unjust? *Euthy*. assents. *Socrates* asks *Euthy*. Since that the dissensions of the Gods were concerning things just and unjust, whether this thing might not put them into dissensions and wars? *Euthy*. confesseth. *Socrates* asks *Euthy*. Whether the Gods do think other things just and unjust, honest and dishonest, good or bad? and that they could not be at strife, unless about these things? *Euthy*. assents they could not. *Socrates* asks, if the Gods love things good and just, and hate and persecute those things contrary to them? *Euthy*. grants. *Socrates* asks, Whether some of the Gods might not think the same things just, others unjust; and while they dissent about those things, stir up sedition and wars among themselves? *Euthy*. confesseth. The same things therefore the Gods both love and hate; and those things which are envied by some, are grateful to other of the Gods, and the same things sacred, and profane; which *Euthy*. could not deny. Such is the condition of men in Aristocracies and Democracies, that while they seek to please one part of their Governors, they displease another. Nor can men in such a condition be secure, that obeying one part, they shall displease another part, and so excite them to endless debates and war. The sad and woful truth of these things, this poor Nation hath of late made sufficient trial of.

Annot.  
Plato.  
Euthyphro.

14. There is nothing in this world, but is subject to humane frailty; no Roses without prickles. And though Monarchy be the best of Governments, yet so long as it is exercised by Men, and since Kings are but Men, and therefore subject to humane frailty, it cannot be expected that all Kings should so perfectly exercise their authority, but that some mischiefs will happen

The incommodities of Monarchy.



happen from them: Nor indeed can it be imagined but some mischiefs will happen to particular men, from the best of Humane Laws; yet without Humane Laws and Government, can never the inconvenience of Tumults and Confusions be avoided.

The Objections against Monarchy, are usually,

Prov. 8. 16.

First, That in the infancie of a King, all things are subject to confusion and alteration. *It is true; and therefore God pronounceth such an estate woful: Yet is such an estate no worse then Aristocracy, which is better then Democracy.*

Secondly, That subsequent Kings do not desire to rule by the Laws made by their Ancestors, but by Laws made by themselves; and so their Subjects are always in an unsetled condition; and subject to alterations. *The Laws of the Medes and Persians were unalterable, yet the Government was always Monarchy. And let a man look into all places of the known world, where the Government is Hereditary Monarchy, if the Government be not from long received and established Laws, which is the Princes greatest security; and therefore in reason ought rather to suffer some mischief from them, then venture an inconvenience by altering them: Whereas in the other Governments, where Factions and mens Interests bear so great a sway, they are daily subject to mutation and alteration. And let any man see how unlike all the Parliaments since 1640, have been in their Interests and Factions; and all of them would have innovated all the established Laws of this Nation, if they could have agreed upon any thing in stead of them.*

Thirdly, That it is an unreasonable thing, Mens lives and estates should terminate in the Will of one Man, and it may be this Man a wicked and tyrannous Man. *But if it be necessary that these things must depend upon some Humane cause, how much better is it for Men to be subject to one Man then many? Nor can any thing be objected against Monarchy, but will be of more force against either of the other Governments.*

It is abhorrent and impossible to frame a Commonwealth in England from the example of the Romans and Athenians.

15. Those Men who imagine to frame a Democracy or Commonwealth here in England, from the example of the Romans or Athenians, &c. let them consider two things. First, That by a general abhorrence of Mankind, Democracy hath been exploded upon the face of the Earth for above 1700 years, (if the Cantons of Switzerland be not Democratical, who have almost ever since their Rebellion against Wenceslaus about the year 1400, (when they first formed themselves into a Democracy) continued mercenary Mankillers to the Interests of the Pope, and the Kings of France and Spain.) Secondly, The state of the Inhabitants of Rome and Athens, were the People, who were *Civitate donati*, Libertines, or absolute Slaves; but with us the Case is quite another thing; for, every Man hath as much right to his Freedom as another, by birth. It is therefore meer folly, from Causes so unlike, to produce like things. Besides; if a man considers the condition of this Nation ever since Monarchy was rejected; that in less then the revolution of Twenty years, the Publique Charge hath been twenty times more then in Five hundred years before; Not only the Nobility and Gentry in general sequestred and undone; but the Publique Revenues both of Church and Crown wasted and sold, all Veneration of Divine and Humane Laws lost and neglected, all Commerce with Foreign Nations interrupted, and the Nation hated and despised by Foreigners; the most Renowned places, which the Piety of our Ancestors founded for

for the Worship and Service of God, prophaned and made Stables for Horses; The Governors, in stead of minding the Publick good, intending only by all unjust means to prefer themselves and creatures; And at this day a greater Debt upon the Nation, then our Parliaments for 400 years have given our Kings, (except the sacrilegious gifts of Church-lands) and the Nation still degenerating into worse; sure no sober man would be in love with Commonwealths.

## CHAP. V.

## Of Sedition.

1. **B**Efore we proceed to the Fathers, Husbands, and Masters Power, it will not be amiss to take a short view of Sedition, and what disposes men to it of themselves, and how they are disposed to it by them who are in supreme Authority. Sedition properly signifies a going apart, or asunder: As the submitting and uniting of Subjects to their lawful head, causes peace and quiet, from whence follows ease and plenty; so sedition causes discord and War, which unless timely suppressed, either ends in Tyranny, that is, by setting up one or more of the seditious, in place of him who by right ought to command, or opens a gap to be overwhelmed of forraign powers. See *Hobbs de Cive, cap. 12.*

Of Sedition.

Seditio, quid.

2. This is the most antient sin, the first of our first parents, the desire of being like to God, judging good and evil: *Therefore God sent him out of the garden to till the ground, Gen. 3. 22, 23.* Absoloms ambition was, that he might judge the land, *2 Sam. 15. 4.* which only did belong to his Father; and by the First proposition of *cap. 3. lib. 2.* all judgment belongs to him who is suprem; The opinion therefore, that judgment of good and bad belongs to the Subjects in general, or to any in particular, is a seditious opinion. It is impossible that judgment removed from the head, should abide any where: for the unreasonable appetite of men doth deem things good or bad, not as they are in themselves, but as they appear profitable, or not, to them; from whence it comes to pass, that the same action is praised by one man as virtuous, and by another is blamed as vitious; neither can there be any remedy for this thing, but the submission of every mans judgment, to the judgment of another. Besides judgment of good and evil, is to put an end to all difference; and what end can there be of difference, when as either every man may judge alike, or no man can tell who shall be Judge?

The desire of judgment disposes men to sedition.

3. It was *Adams* answer to God, when he asked him whether he had eaten of the tree whereof he commanded him not to eat; *The woman which thou gavest me, gave me of the tree, and I did eat.* It is usual with seditious men when they are disposed to sedition, to oppose the laws of God against humane, and plead conscience, because through their stubbornness they will not receive humane laws. What follows? No private man but may assume to himself as much liberty as another, and every man will desire to seem as tender-conscienced as another; so that, *In nomine Domini incipit omne malum:* Men pretending conscience, destroy all society and government.

Disobedience to Laws.



ment, It is therefore a seditious opinion to affirm, that subjects sin obeying their Sovereigns in all things not contradicting Faith, Religion, or the Law of Nature.

Ambition.

4. When men abound with wealth and ease, partly by their own natural affection, and excited by their flatterers, deem themselves slighted if they have not honor and power in their concept proportionable to their wealth, no wonder if they study novelty to acquire popular affection, in lieu of what they call Court favor.

Envy.

5. When men are over-conceited of their parts and abilities, and because they are not preferred in Church or State, according to their desires, use their abilities to promote the affections of a faction contrary to what is Trump, (as they call it) which, where liberty may be not only disputed, but opposed to Prerogative, shall never be wanting; a small deal of wisdom serves the turn, a little eloquence is enough, if they can use some small flourish of words (no matter whether they be to the purpose or not) at Markets, Sermons, Bull-baitings, &c. and then tell the auditory, that this thing done in State is against law, and that thing done in Church is against conscience; no minding of what is their duty, all their talk is judging their superiors; and this buzzed into the heads of light and inconstant men, begets all the talk of the Country, and is beleaved with the same Faith they beleeve the Gospel or their Creed; and if Authority shall endeavor to suppress the further growth of such seditious practice, by punishing the Authors, it will be deemed by the well-affected, no less than an invasion upon the liberty of the subject, and persecution of the Gospel.

That supream  
Princes are  
obliged by  
their own  
Laws, is a  
seditious opi-  
nion.

6. If *Lex lata* had any obligation upon the Legislator, then were the Creature subject to the Creator, and the Father obliged to what he commands his Son, and the Master to what he bids his Servant, and God to what he commands Man, which is absurd, nor is it less absurd that the supreme power should be obliged by the Laws given to Subjects. They who assert that supream Princes are obliged by their own Laws, should do well to make their Children shoes and cloathes, to serve them when they are men; For as mens vices and manners vary, so must humane Laws. But men neither consider themselves nor Princes, in asserting this: For Princes are in a more vile condition then the poorest man, not to have the freedom of will; and they themselves are left to the rigor of the Law without hope of mercy. How can any man accuse *Hen. 7.* for his rigid exacting the penal laws; when by this opinion he had not power to remit any thing of them? And why do men tax *H. 8.* for a cruel man and a Tyrant, because he put so many men to death for not acknowledging his headship of the Church, the not subscribing the six Articles, &c. if he were obliged by his own Laws? Nay, they do not allow Queen *Mary* a power to releive any Protestant, given over to the secular power by Bishop *Bonner*. From this very opinion sprang all the miseries for these last 18 years; *Scots* had liberty to invade us, but the King was obliged by his own Laws not to relieve his oppressed and afflicted Subjects. This was that which gave the *Turks* first entrance into Christendom; for while the wrangling *Grecians* not content with their rightful Emperors, place usurpers in their rooms, who to gratifie them again, and to strengthen themselves against the right heirs, care not what they grant their well-affected Subjects, which so weakned the power of the *Grecians*, that contesting with their Emperors about their liberties and priviledges, which their

their usurping Emperors had granted them, and neglecting their common (and at first despised) enemies the *Turks*, they were all overcome in a short time by a handful of men obedient to their Prince. And what private man can assume to himself the knowledge of good and evil, that is, ascribe to himself a power over his Superior, by judging whether he hath transgressed the Law, or not? And let any man shew that ever our Parliaments, as they call themselves, Councils of State or Safety, were ever obliged by their own Laws, and I will submit that rightful Princes are obliged by their own Laws.

7. There is nothing more to be wished in this world, then that the Will of them which command, might be moderated and restrained to Reason; as that Kings, Fathers and Masters should never exact any thing of their Subjects, Children and Servants, but what were reasonable. But it is impossible that the Supreme power can be moderated; unless it be divided, or subject to the Moderators: It is therefore a seditious opinion, That Supreme power may be moderated.

That supreme power may be moderated.

8. All right that any Creature hath to any thing, is either from the Law of Nature, or from some Humane Law; but no Subject can have *Pradium directum cujus nullus auctor est nisi Deus*. Sir E. Co. Com. Lit. pag. 1. b. *Qui dominium non habet, dominus non est*. And he that holds of none, is Lord of all; which no Subject can be. It is therefore a seditious opinion, That any Subject hath any thing proper against his Sovereign.

That anyman has any thing proper against the Supreme power.

9. There has not any thing for more then this last Century, caused so much dissention and bloodshed among Christians (to the shame of Christianity) as the specious pretence of Reformation. The *Turk*, either restrained by God, or not willing to be an Enemy to Mankind, hath been only a spectator, not actor in this Tragedy. *The end doth sanctifie the means*, was a doctrine generally received among these Reformers; if the end were Reformation, it was no matter by what means it was brought to pass: Hence it was, that every where in the Western world, men disposed to sedition, made Reformation their pretence: No Prince must use his power to restrain them; if he do, *Calvin* gives them a lesson, *Abdicant se potestate terrent Principes, dum insurgunt contra Deum; immo indigni sunt qui censeantur in hominum numero; potius ergo oportet conspuere in illorum capita, quam illis parere, ubi sic proterviunt ut velint spoliare Deum jure suo*: Earthly Princes do divest themselves of power, when they set themselves against God; yea, they are not worthy to be accounted in the number of men: Men ought therefore rather to spit upon their heads, then obey them, where they deal so saucily, as if they would spoil God by their right. And *Luther*; *Ab omnibus hominum legibus exempti sumus, libertate nobis Christiana per baptismum donata*: We are freed from all Laws of Men, liberty being given us by Baptism. *Et scio nullam rempublicam feliciter legibus administrari*; I know there is no Commonwealth happily governed by Laws. And, *Turpe enim est & iniquiter servile, Christianum hominem, qui liber est, aliis quam celestibus & divinis subjectum esse legibus*: It is a filthy and unjust servile thing, that a Christian man which is free, should be subject to any but Heavenly and Divine laws. And whether these mens followers have not well practised their Lectures, wheresoever they have been tolerated either in Germany, Bohemia, Austria Upper and Lower, Hungaria, Transilvania, Sweden, France, England, Scotland, Low-Countries, Geneva, &c. let any

That the people may reform, where Princes will not.

Comment. on Dan. 6. 21.

Lib. de capit. Babil. de baptismo.

Cap. de matris monito.

Cap. de sacr. ord.



man who hath read the Combaſtions of Chriſtendom, judge; and the Anabaptiſts and all other Sects may from their principles juſtify all their actions.

That tempo-  
ral good fol-  
lows in order  
to ſpiritual.

10. There is nothing more manifeſtly commanded by God in the Old and New Teſtament, then obedience to Temporal Princes; yet there is nothing more endeavored (to the ſhame of Chriſtians) then by preſence of Religion, to uſher in Rebellion. By this opinion are all Chriſtian Princes made in a worſe condition then Infidel or Mahumetan, and ſubject to the Spiritual powers in their Temporal juriſdiction. But, *mutato nomine*, a new generation of men have ſprung up, and changed---*Bonum temporale ſequitur in ordine ad bonum ſpirituale*, into---*The wicked have no right to their goods*; and, *It is lawful for the children of Iſrael to rob the Egyptians*.

Rex major ſin-  
gulis, &c. is a  
ſeditious  
opinion.

11. *The King is greater then the Singulars, and leſſ then all his Subjects*; is a Fools bolt ſhot at ſuch random, that it is not worth the meaſuring whether it be near the mark, or not: For not only all Subjects owe their obedience, as much as every one; but never was any Prince univerſally rejected or diſobeyed by his Subjects.

That Subjects  
may upon  
any preſence  
levy war  
without con-  
ſent of the  
Supreme  
power, a ſe-  
ditious opini-  
on. See *Calv.*  
*caſe 11, 12.*

12. See Sir *Ed. Coke*, 3. *par. Inſt. pag. 9.* *Ou ſi homme leva guerre encontre noſtre Seigneur le Roy*: This was High Treason by the Common Law; for no Subject can levy War within the Realm, without authority from the King, for to him it only belongeth. And a little after; If any levy War to expulſe ſtrangers, to deliver men out of priſons, to remove Councillors, or any other end pretending Reformation of their own heads, without warrant, this is a levying of War againſt the King, becauſe they take upon them the Royal authority, which is againſt the King.

Negligence in  
the worſhip  
of God.

13. Let no Prince ever hope for obedience from his Subjects; who takes no care that God be duly ſerved by them: For, where the fear of God is not, men will not honor their King, but are diſpoſed to ſedition.

Contempt of  
the Regal  
power, diſ-  
poſes men to  
ſedition.

14. Honor is nothing elſe, then the eſtimation of anothers power *viz.* That a man hath power to protect, reward, and puniſh another. And prudent Princes ought ſo to maintain the reputation of this in their Subjects, that it may be received and believed of all: For beſides that ill men will, where there is no fear of puniſhment, become more licentious; generally all men ambitiouſly (where they are not reſtrained by fear) deſire to inſult over their Superiors. *Aſop* gives an Item of this laſt, in the Fable of the Logg which *Jupiter* gave the Frogs for their King; when they became fearleſs of it, every one jumped inſultingly upon it: And examples of the former are clearly ſeen in men, who condemned for offences to death, they penitently acknowledge their faults, and deſire forgivenes of that Power that puts them to death; whereas ſcarce any offender fearleſs of puniſhment, did ever ſubmit and aſk forgivenes for it. Princes therefore ought principally to take care, how either by their vices, remiſs Government, or otherwiſe, they make their perſons or power contemptible; for when power is contemptible, the exerciſe of it is never permanent.

Conceſſions of  
Princes to  
their Subjects,  
diſpoſes them  
to ſedition.

15. If the Age tends to worſe, and men of this latter Age have been worſe then in the precedent, as men generally hold; and if Princes power, in Ages when Mankind did not ſo faſt degenerate into all forbidden wickedneſs, were not ſufficient at all times to reſtrain the ſeditious and diſorders of

of their Subjects; then is it a most unreasonable thing in Princes to indulge this ambitious desire of their Subjects, by granting them liberties and privileges which they had not before. And if any man can shew that ever any where in the world, Princes did make their Subjects better by granting them a more than usual liberty, but only made them more arrogant to demand more, until their Majesties and Authorities became so contemptible, that instead of governing their Subjects, they must be content to have what terms their Subjects please to impose upon them, or to reject them, which in the end they will assuredly do; I will be content to believe Princes do prudently, by granting to their Subjects all their real Prerogatives, and retaining only, or some small matter more, than the empty Title.

16. It is not only the office of a Prince, that good Laws be made, but that they be carefully put in execution. There is no man who does not will and desire to be happy; but few men who are daily solicitous and industrious to attain to happiness. It is the part of foolish men, only to will and wish; but the part of prudent men, to do wisely. A man shall see it in a family, where the Master only commands, and never looks to the doing, that in a short time, though he commands much, he will have little performed: And where Subjects have gotten a licentious habit of neglecting or transgressing Laws, it will prove a hard thing to reclaim them, whereas they might have been easily preserved in their obedience by careful execution of the Laws.

If Laws be  
not carefully  
executed.

17. There is nothing more dangerous in Church or State, then Innovation: It is therefore the most secure way of governing (when mens manners and vices do not require new Laws) by the antient and received Laws of a Nation: This will secure the Prince from the imputation of Tyranny; he may better hope to preserve a strong house built upon a sure foundation, then by destroying it, to undertake to build another, which he either knows not how to finish, or having built it, cannot hope it will be better then the other, or cannot tell whether it will be of any continuance, but falling will overwhelm him in the ruine of it. Besides, the Subjects from the example of their Prince will become studious of innovation, and censure whatsoever Laws he prescribes in lieu of the old ones: Those he gives, if they please one, will displease another; it will be the only talk of the City, Country, and Market: If he punish any opposer, (for it is not possible but disadvantage will be to many, and the loser will speak) he shall by all his faction be cried up for a Martyr and Patriot of his Country and Laws: It will make Subjects diffident of their condition, and fearful that having Property by the old Laws, they shall lose all by new ones. Yet there is nothing in this world can secure men, and make their condition permanent: For, what is usually objected by seditious men against their Prince, *viz.* the invading and not suffering freeborn Subjects to have the benefit of their antient Laws and Customs, was imputed a crime to our late King, who was persecuted by his own Subjects, because he adhered to the known and received Laws of the Land; for, after the year 1642. there was not any Petition presented to the King by one or both Houses of Parliament, but was against the established Laws of this Nation. But no question, it was not the Kings adherence to the Laws, but the iniquity of the Times, which brought so great a calamity upon himself, his Queen and Posterity.

Alterations  
of Laws.

18. If



Resuming any  
thing granted  
to Subjects.

18. If there be any happiness in this world or the world to come, which may be hoped for by any man, no question but it is to be attained by Justice and Obedience; and Justice and Obedience is, in receiving and doing the Commands of our Superiors; nor can any one be a just or obedient man in any thing, wherein he makes not his Superior (that is, God, Church, King, Father, Mother, or Master) the reason or rule of it. Yet there is nothing more desired and pretended by ignorant and seditious men, then liberty: And wherein do they place this liberty, but in weakening the power of him to whom they owe their subjection? And the more any Prince grants to his Subjects, the more liberty the Subjects ascribe to themselves, and the less power to their Sovereign; and will rather be devoured by foreign Enemies, then endure that their true Prince shall infringe their liberties by resuming any thing granted them, although it be for their necessary defence and preservation.

Granting pri-  
viledges to  
particular  
places, causes  
sedition.

Cap. 38. 32. 33.

19. Government is endangered either by intestine broils which are raised by factious and seditious men, or foreign war; and Princes ought to be more careful to preserve their Subjects in general from intestine then foreign war: For besides that civil wars are more dangerous to the Crown then foreign, so intestine wars always end in loss of subjects in general, whereas by foreign wars much benefit may arise to King and subjects. And there is nothing so much desired, and that can so much conduce to the suppression of factions and seditions, as the equal and due administration of the same Laws to Subjects in general. But in vain shall Princes endeavor to suppress factions and seditions, when they make them, by making so many Factions, as they make Corporations: For who does not see what an antipathy there is between the Country-Justices, and the Magistrates (as they call them) of Corporations, where they agree not *in aliquo tertio*, that is, in some mischief, plainly in advantage of the Corporation? And let any man shew one Corporation of an hundred, which hath not used the Priviledges granted them by Princes, to the dissolving of that Power which granted them their Priviledges. *Ecclesiasticus* says, *That without Handicrafts men and Tradesmen a City cannot be inhabited; but they shall never sit in the place of Judicature:* And indeed, what thing can there be more abhorrent, then that men, who by fraud and unjust gains have gotten much money, should therefore sit in Judicature, and judge and condemn poor men to death for small offences in comparison of theirs, and different only in this, that the one committed their offences fraudulently and covertly, and the other forcibly and violently:

Long peace  
disposeth men  
to sedition.

20. As in mens natural bodies, well-ordered action is much conducing to the preservation of health, and overmuch ease and sloth the original of many distempers, which cannot be recovered without bloodletting and physick: so in the bodies of Kingdoms and Empires, a well-ordered *Militia* constantly kept in action, conduceth much to the preservation of a Nation; whereas sloth, and neglecting military discipline, makes a Nation not only unfit and unweildy to defend it self against its outward Enemies, but also contracts infinite Civil distempers within it self, all tending to a Civil war. Well therefore might *Cato Major* in his great wisdom cry out in open Senate, That soldiers and men of war were to be still busied in arms far from home; for that in so doing all should go well with the State, and the glory thereof increase. And the *Romans* always judged an external war the most requisite and

and necessary remedy to prevent an intestine. And no doubt but this is, at this day, the Politick reason of the long wars which *France* makes against *Spain*, rather than any fear or hatred of the Nations one to another. It is therefore a miserable condition in which Princes are (without Gods great and special favor to them) that either they must maintain a foreign war, and so become accountable to God for all the blood which shall be spilt, if unjustly undertaken; or else by long peace and ease dispose their own subjects to the ruining and destroying of one another. It is said of *Q. Eliz.* that she would never consent to the total subversion of *Dunkirk*, lest that by a careless neglect of providing for themselves, the Seamen should be forgetful, and unfitting for Naval warfare. And *Scipio African* would not give his consent to the utter subversion of *Carthage*, lest that the *Romans* (*Carthage* being destroyed) should not find another Nation which might keep the *Roman* Valor exercised, and so by its own inactivity and sloth, it should degenerate and be dissolved. Besides the excellencies of Military discipline, (not but that any thing may be abused) by which Nations are protected from Foreign enemies; not only Religion, Justice, Peace, Learning, &c. are internally preserved; it also makes men industrious and active in business, valiant in dangers, temperate in their desires, and to be wary and prudent in their actions. It is indeed an admirable thing to consider, how the most wise, greatest, and best God hath attempered all things: Not only that all things are differing, if not contrary to one another, but also hath made and placed all Nations so enemies one to one another, that he may by the help of one, revenge the injury and injustice which is done by another; that so from fear of danger, all might be kept within the bounds of their duty. Hence it was that God said, *I will henceforth not cast out before me one man of the nations which Josuah left when he died, that through them I may prove Israel, whether they will keep the way of the Lord and walk therein, as their forefathers did, or not. And these are the nations which the Lord left, that he might prove Israel.*

See Bod. de rep.  
lib. 5. 363.

Judg. 2. 21, 22.  
& 3. 1.

21. There is nothing more establisheth a Throne than Judgment, (which is giving sentence according to Law) but he that buyes the place, must needs sell judgment, or else he will be a looser by it. And what can more dispose Subjects to seditions, and to seek for judgment and right in an extraordinary way, than that they cannot hope for it from corrupt Judges? Well therefore said King *Jugurth* when he departed from *Rome*, *Vade venalis civitas, mox peritura si emptorem inveneris*. Besides, who will fear to violate Laws, and endeavor to raise sedition, if he may hope to buy off his punishment, which should deter him from it, by corrupting the Judge?

Selling of  
places of Ju-  
dicature,  
causeth sedi-  
tion.

22. Though no man hath any thing proper against him who hath supreme power; and although no man can hope to preserve any thing which he hath, but as he, and what he hath, is secured by that Power which gives him property; which Power must be preserved by every mans life and fortune, or else no man can hope to enjoy any thing he holds by that Power; and the paying of Taxes, is to maintain others who are to expose themselves and their lives in defence of what he and his fellow-subjects enjoy: Yet are none of these things considered by the greatest part of men; but as Mr. *Hobbs* observes, The raising of Taxes makes men fare as those who are in the disease called *Incubus*, (or as we say, ridden with the Night-mare) which rising from the stomach, makes men think they are invaded, oppressed

Imposing and  
raising Taxes  
disposes to  
sedition.

Cap. 12. art. 9.

atid



and suffocated with great weight: Which thing, they who seem to themselves to be oppressed with all the weight of the City, are prone to sedition; and men declining in their fortunes, will not spare (though the fault be in themselves) to impute their declining condition to the payment of the publick Taxes; nor will avaritious rich men fail to pretend poverty, and seek by innoyation and sedition to prevent them.

Passionate desire to punish Subjects, especially where many are peccant, moves to sedition.

23. *Honos est in honorante*; Honor is nothing else, but the opinion of anothers power, joined with goodness: Majesty does never appear so amiable, as when arrayed in Clemencie; whereas he who rigorously executes his power, will be hated, and servilely feared by them who otherwise would honor and willingly obey him. It were the most easie and natural thing in the world to govern well, if the violent and rigid execution of Laws against all offenders, would cure the maladies of State; nay, Subjects ought to be preserved (though peccant) where the pardoning may appear an act of grace, not remifness, and the example not encourage others to the like offence. Punishment ought always to look forward, never backward; that is, Princes in punishing ought by the example to deter others from the like offence; not to take pleasure in punishing any who hath offended him. *I will avenge the blood of Jezreel upon the house of Jehu, and will cause to cease the house of Israel, saith the Lord, Hos. 1. 4.* How should God avenge the blood of Jezreel upon the house of Jehu, whenas Jehu did nothing but what the Lord commanded him? The reason is given, that Jehu took pleasure in executing so dreadful a judgment upon his Masters house. Weak and indisposed bodies are killed, never cured by violent physick; nor will Patients ever seek to Physicians, who they fear will rather kill than cure them. Princes who by violent and cruel ways do govern, suppress, yet nourish a fire, which breaking out will hardly be quenched: Yet it is sometime the fate (I dare not think through the fault) of most serene and clement Princes, to suffer death and martyrdom from the senseless rage and fury of their seditious Subjects. If then the insite piety of the most devout, religious, and best of Princes, adorned with all the excelling virtues of Patience, Temperance, Chastity, Justice, Mercy, love and tender care of his Subjects, Magnanimity in Adversity, Moderation in Prosperity, could not secure Innocent Majesty from the violence of unnatural Subjects; sure, Peace and happiness may by other men be endeavored and prayed for in the next World, but it can scarcely be hoped for in this.

Annot.

If there were neither Heaven nor Hell, no hope of blis, or fear of punishment hereafter; yet sure, so much Morality should be harbored in humane breasts, as not causelessly to offer violence or injury to them of their own kind: How much more unnatural, ingrateful, and inhumane then is it for Subjects, against all Oaths of faith and allegiance, not only not to make any restitution of those things which they hold of their Prince, before they attempt any thing against him, but also to imploy them all to the destruction of that Person and Power, by whose grace and favor they enjoyed them. And if that Monarchy be Tyranny, as Libertines affirm, and that all power is from the People; then ought they not in reason to condemn it in the cause, and allow it in the effect, and rob the People of so great a part of their original right, by retaining their Estates which were all mediately or immediately holden of the Crown. If Regal power be unjust and usurped in the cause, then cannot any act of it be just or legal; and so by consequence all

all these famous Assertors of Liberty do unjustly and illegally hold their Estates, which are nothing but Concessions originally from the Crown, and do unjustly usurp them from the People, from whom originally all power is derived. And where these men complain so much of unjust, illegal, and arbitrary power of a Prince; let any man shew where ever, after they had usurped Regal power, they made Justice, Law, Equity or Reason, but only their Rage and Will, the rule of their Actions and Laws.

24. It is a vain thing to expect that Subjects will long be governed in peace, where either they are not governed by force of Arms, as the *Turks*, *English*, *Scots*, *Irish*, and *Low-Dutch* are; or where the Subjects have not that estimation of their Prince, that by his power they are protected in their lives and estates, and from him do claim whatsoever may be called theirs; and do not unite themselves in a Religious Unity (which is the chiefest bond of Peace) or Publique Form and Communion of serving God: For, both in Church and State, there must be some one thing to which all Subjects must indifferently submit themselves, or it is impossible there should be any decision of their differences in either. Where men therefore will not indifferently submit themselves to the just and legal established Government in Church and State, there necessarily must men (whatever they pretend or hope for) be forcibly governed by Arms, or they will infinitely destroy one another. It is true indeed, that *Henry* the Eighth, (who being of all mortal men the most unfit for a Churchman, ascribed to himself the Headship of the Church, and) having converted to his own use so great a part of the Church-lands, the veneration which men retained of the Church, became vile and contemptible, and the Crown lost the chief support thereby. The Crown thus left almost without support, it descended to a Child; in whose Aristocratical reign, not only the Chantries and divers other Religious Houses were given by the Parliament and Bishops to the King, but almost all things Sacred became a prey to the ravenous Courtiers. Queen *Mary* endeavored to have had restored all to the Church again; but the lands being incorporated into particular mens estates, it was not in her power. After her, Queen *Elizabeth* by Act of Parliament so stopt the precipice of things, that what was left in the Church, might not be aliened or made worse by the Possessor; yet so, that she left a gap open for herself and her Favorites to prey upon it: which was after shut by King *James*, and with great care secured by King *Charles*. All this while grew up a Faction in Church and State, which became the ruine of both: For not only in the Church, the Publique Liturgy, Communion, or Religion, was vilified and defamed; but the Governors reviled with all opprobrious names of *Tyrannical*, *Antichristian*, &c. It is true, the Majesty of the King was not so openly reviled, yet was it insensibly daily undermined by them; in which they were much assisted by a company of half-headed Lawyers, who in all Assemblies distilled this doctrine into ignorant men, *That the Law was above the King, and that they had Property against him in their estates and goods*. Whereby not only Citizens and Great places became generally inclined to this new doctrine of the Teachers and Lawyers; but the Country-Gentleman thought himself independent from the King both in his life and estate; the Yeoman cared not for the Gentleman, and as little regarded the King; so that the veneration of the Royal Name became every day more con-

By what means, and from what causes, this Nation became contemptible.

T

temprible



temptible and despised; all honor and reverence due to the King & Church, was converted unto these Patriots of their Countries Liberty, and New Lights: Nor could the Church relieve the Crown. (although the Governors were well-affected towards it) being by all the Faction more hated, than the King became despised; until in the end the chief Governors both of Church and State not only became Victims to the rage and lust of seditious men, but the Revenues of both a prey to their avarice. And now what is left for this miserable Nation to expect (having forfeited all Piety and Allegiance to Gods Church and his Anointed) but after all this consumption of the Blood, and Publique and Private Revenue of the Nation, and having lost all Reputation and Commerce abroad, for the future to be *Turk-like* governed by armed and hungry Soldiers, without any probable hope of Redemption.

*Object.*

It may be it will be here objected, That though poor and contemptible Princes be rarely long obeyed, especially where their Subjects are opulent; yet had the Church never so great veneration, both for power and piety, as when in the Primitive times it was poor; whereas afterward, when it became rich and mighty, it did degenerate into many vices and heresies, and lost much of estimation and piety which it had in its poverty.

*Answer.*

I grant, that God did by his grace and power originally by a company of poor men and Fishermen, against all the greatness of worldly power, miraculously plant a Church; and that those poor men sent by God, were supernaturally inspired by his grace, (which, not their poverty, was the cause of their piety and sanctity, and that they were so highly honored by primitive Christians:) yet sure, when God hath supernaturally planted his Church, it cannot be in reason expected he should preserve it always by miracle: And sure those are very ungrateful men, not to contribute ordinary means, for the preservation of what God hath extraordinarily planted: Nor is there any thing more vain, then to imagine that men are better, for being poor; or that according to the ordinary course of things, they will not be by men in general esteemed vile and contemptible, who are so.

*Juvencal.*

*Nil habet infelix paupertas durius in se,  
Quàm quod ridiculos homines facit.*

CHAP.

## CHAP. VI.

## Of the Fathers power.

1. **U** Numquodque resolvitur in id, ex quo componitur; Dust shall return to the earth as it was, and the Spirit to God who gave it, Eccle. 12. 7. It is not the good will and pleasure of the All-prepotent God, that only the individuals of one age, should see the greatness of his Majesty and power; therefore he was pleased to create man as well as other Creatures in this inferior orbe, in a \* mortal state; yet he endued him *generativa facultate*, that though he does dye in his person, yet he should live in his posterity, and as one generation passeth away, so another commeth, but the earth abideth for ever. *Eccle. 1. 4.*

Introduction.  
\* If Adam had not been created in a Mortal State, the Sacrament of the Tree of life had been a vain institution.

2. There is nothing more evident, then that in perfect Creatures (of which man is the most perfect) that God is the prime and efficient cause, or God working by naturall causes, the Sun is the efficient cause, and Male and Female the Instrumental, *Sol per lumen generat hominem.* See Harvey de generatione Animalium Cap. 33. Man and Woman therefore being the means whereby God does renew the species of Mankind, and all Creatures having power over themselves in all things, wherein they are not restrained by some natural or humane Law, and every Child being alike part of either of his Parents, the Power of Father and Mother is alike over their Children, and so by consequence the subjection and obedience of every Child is alike due to Father and Mother: And to honor thy Father and thy Mother, is the First precept of the second Table of the Decalogue.

The power of Parents alike over their Children.

3. Man and Wife being but one person, and the Husband being the head of the Wife, and the Wife being in the power of the Husband, the Husband hath the power and command as well of the Children as of the Mother; yet the piety and observance of Children to their Mother, is as much due as to their Father.

Why in Matrimony the power is in the Father.

4. Grotius, cap. 5. art. 2. de jure belli & pacis, out of Arist. pol. 1. cap. ult. & eth. 5. cap. 10. distinguisheth the Fathers power over Children into three times, viz. 1. The time of their imperfect judgment; 2. The time of their perfect judgment; 3. The time when they are out of the Fathers family. In the first, all the actions of the Children are under the command of the Parents: In the second time, whenas judgment is matured by age, and are of the family, they are subject as part of the family: In the third, when he is matured by age, and out of the family, the Son is in all things *adultus* of his own right. Yet he says (and truly) parag. 5. The Fathers power so follows the Fathers person, that it can never be pulled off nor transferred to any other; for, the Fathers power arising from generation, is due to him by the Law of Nature, and so always the same, if not aliened by the act of God. And therefore \* *quando & ubi* make no alteration in the Fathers power; for it is the same when the Son is an Infant, and when adult; when he is part of the family, and when not.

Grotius his opinion of the Fathers power,

\* Confuted.



The Father  
hath power  
of life and  
death over  
his children.

Salust. de conj.  
Cat.

The Son hath  
propriety a-  
gainst his Fa-  
ther.

Why out of  
wedlock the  
Fathers com-  
mands are to  
be preferred  
before the  
Mothers.

5. Where the Law of Nature gives a power which is not restrained by the Law of Nature, the power is absolute: But it is evident, that the Law of Nature gives Fathers a power over their Children without restriction; Therefore the Fathers power is absolute; and by consequence he hath power of life and death over his Children. See *Bodin. cap. 4. pag. 21. de rep.* where he says, That the *Persians*, the people of Higher *Asia*, the *Hebrews*, *Romans*, *Celts*, *Gaules*, the *West Indians* before the *Spaniards* subdued them, did use this absolute power. And see *pag. 23, 24.* how he makes all the strife, disorders and contentions among Brethren, their Father living, the wantonness, luxury and riot of youth without fear of punishment, the contempt and scorn of the Fathers person and power, and the decay of the glory and ennobled virtue of the *Romans*, to proceed from the taking away of the Fathers power. Examples of the Fathers power of life and death are hard to find, because it cannot easily be imagined a Father should give judgment upon himself, (his son being part of himself) to cut off any part of himself, which he hopes might by any means be cured: Yet *Quintus Fulvius* did adjudge his son to death, for being of *Catelines* Conspiracie: And see *Deut. 21. 18, 19, 20, 21.* where it is most evident, that the Father hath power of life and death; for the People do but execute the judgment of the Father and Mother, *That such a son is stubborn and rebellious, &c.* The exercise of this power is restrained generally among Christians by positive humane Laws; but from what ground, I cannot tell.

6. The Fathers power arising from generation, and the person of the Son being only generated, the Fathers power can extend no further; and therefore whatsoever the Son does acquire, it is his own, excluding his Father.

7. Though the Son out of wedlock is alike subject to both parents, because he is alike part of both; yet if the Father and Mother command contrary things, whereby it becomes impossible for the Son to obey both, there the command of the Father is to be preferred, because of the excellencie of his sex.

## CHAP. VII.

### The Husbands Power.

1. **T**He Husbands power doth not arise *ex concubitu*; for then a man hath power over all the women which he hath, or shall have known, which is absurd; besides, one woman known by several men, should be alike subject to them all, which is impossible.

2. The Husbands power does not arise from his Wifes being a part of his family; for any part of the family, may become no part of the family; but the Wife can never be out of the power of her Husband, therefore the Husbands power does not arise from the Wifes being a part of his family.

3. The Husbands power does not arise from the Wifes submission or subjecting herself to her Husband, for that is but an act of her will, & *unumquodque*

*quodque dissolvi potest eo ligamine quo ligatum est*; and therefore by an act of her will, she may when she list set herself free.

4. It does not arise from the Husbands accepting of the Wifes will; for that makes the Husband obedient to his Wife; obedience being no other thing, but the accepting the will of another, which is unnatural.

5. The Husbands power does arise from the law of God or Nature, by the conjunction of Man and Wife in wedlock: For these two individual persons, by the law of God, are made one mystical person, of which the Husband is head; and the head is the directive and ruling part of the body, therefore the Husband is the director and ruler of his Wife.

From whence  
the Husbands  
power doth  
arise.

But if the Law of Nature, by Marriage, gives the Husband a power or right of command over the Wife; why may it not be, that God by the Civil pact might give a Prince or Court a right of command over those Men who made it?

Object.

I answer, That first a Similitude proves nothing. Secondly, The cases are nothing alike: For, Marriage was an institution of God in Paradise; and the power of the Husband over the Wife, being due by the Law of Nature, hath been ever since attributed by Mankind to the Husband; yet so, that after the death of the Husband, the Wife becomes free from such subjection, until by Marriage she again subjects herself. In none of these respects does this hold in the Civil pact; for no such thing was ever instituted by God, nor any such thing ever constituted or done by Man, but only a *Chimera* invented by capricious men, to palliate sedition. Nor did ever any man become free from subjection to Supreme powers, by the death of him or them to whom they made their subjection by virtue of the Civil pact: Nor was it ever known in the world, that Men were free before they made their Civil pact, as Women are before they marry.

Ans.

6. God gives a power to the Husband without restriction; viz. *Thy desire shall be to thy husband, and he shall rule over thee, Gen. 3. 16.* And therefore the Husbands power over the wife is without restriction, and by consequence the Husband hath power over the life of his Wife. Antiently among the *Gauls*, this power was not restrained. The *Romilian* Law restrained the Husbands power to put his Wife to death, for four causes only. This power was used by the *West-Indians*, before they were subdued by the *Spaniards*; and is generally among the *Idolaters* and *Mahumetans*. But the exercise of the Fathers and Husbands power of life and death over their Children and Wives, is restrained not by any law of God (that I know of) but by the Temporal laws; and yet no wrong done to the Fathers or Husbands neither: For, though their Children and Wives be in their power by the law of Nature, yet by the law of Nature are they in the power of their Sovereign, and subject unto him: And though the Fathers and Husbands power be from the law of Nature, yet the exercise of it is humane, politick, and voluntary; and the exercise of all Subjects voluntary actions, may be restrained and determined by him, who hath the supreme power; therefore the Fathers and Husbands exercising their power over their Children and Wives, may be restrained by him who commands by the highest right, which is the King. But supposing the Husbands and Fathers power to be from the law of Nature, and Regal power but a politick and invented thing, and made only by the will of Man; it were then a violence upon the law of Nature, that any thing which hath no origination but from the invention

The Husband  
hath just  
tye over  
his Wife.

Caesar lib. 3.  
de bel. Gal.

ons



ons and wills of Men, should restrain the exercise of that power which God hath given Fathers and Husbands by the law of Nature.

The Wife has nothing proper against her Husband.

7. The Husband being the head of the Wife, she is in all respects of law deemed *civiliter mortua*, nor can take or purchase any thing during the coverture; but whatsoever is given to the Wife, is *ex facto* the Husbands. Yet Marriage being a Sacrament by the institution of our Saviour, and *Ephes. 5. 25, 32.* a Mystery of Christ and his Church, and so the cognisance thereof due to the Ecclesiastical power; the Church, upon the penalty of Ecclesiastical censure, may compell the Husband to allow his Wife Alimony, if without sufficient cause he shall refuse to cohabit with her.

Poligamy was lawful before our Saviour.

8. If Poligamy had not been lawful before our Saviour Christs time, then had our Saviour been illegitimate, being descended of *Bathsheba*, when *David* had many other wives. Nor can the argument drawn from the necessity of propagating Mankind, take place when *David* reigned; for there never was in so small a Continent so great a number of people, as the *Israelites* were when *David* reigned, as appears by the Number which *Joab* took, and for which *David* was punished with so great a pestilence.

Annot.

If it were, before the divine law of our Saviour, lawful every where for Men to have many Wives; I do wonder why Mr. *Hobbs*, *cap. 17. art. 8. de Cive*, says, That our Saviour made no laws but the institution of the Sacraments, which are *Baptism* and the *Eucharist*; And if Matrimony be a Civil institution, as he affirms, then Poligamy is lawful for all Christians who are in subjection to the *Turks*, &c. where by the Temporal laws it is permitted; and the Kingdom of *Congo* rejected Christianity for no other reason, but because they were not allowed plurality of wives, which Mr. *Hobbs* could easily have dispensed with. I do challenge Mr. *Hobbs* to shew any one instance, where ever in the Christian world (before all things ran riot here in *England* since 1642.) the Temporal power took cognisance of Matrimony.

What Matrimony is.

9. Matrimony is the act of two free persons (*viz.* neither precontracted nor married, nor within the degrees prohibited by God, *Levit. 18.*) of different sexes, capable of performing the end of marriage, mutually taking one another for Husband and Wife: *I N. take thee D. to be my wedded Wife; I D. take thee N. to be my wedded Husband.* But this must be done publicly, and Banns of both parts publicly pronounced three Holidays, or a Licence procured from the Ordinary for dispensation, with all the rites and solemnities enjoined by the Church, or else the Church takes no cognisance of it.

Whether Matrimony be dissolvable.

Lev 18.

10. Where the Matrimony is subsequent to the allegation, there the *Vinculum* is dissolvable: As if one man marries another mans Wife, or a Husband, his Wife living, marries another; or if the parties contracting or marrying, be within the degrees forbidden by God; or if either party were precontracted, or frigid; these necessarily preceding the Matrimony, do dissolve the bond: But where the matter or allegation is subsequent to the Matrimony, there the bond of Matrimony cannot be dissolved, but only a Divorce upon just cause is grantable to separate the Complainant *& woman* & *themselves*. The reason why in this latter case the Matrimony cannot be dissolved, is, because Marriage being an institution of God, it is in the cause superior to any Humane law or act; and so by consequence cannot by them be dissolved. And indeed, in proper speaking, where the Matrimony

is subsequent, it is rather not done, then dissoluble, the persons marrying being *personae incapaces* for such an action.

II. The Holy Ghost, *Ephes. 5. 25, &c.* shews the duty of Husbands: And *Cato* (though no lover of women) did think it sacrilege in the Husband to strike his wife, *Plut. vita Cato. cens.* No question, the right and careful education of Children, is the onely means by which Parents may hope to have any comfort of them here or hereafter; for, *Train a child in the way when he is young, and he will not depart from it when he is old*, says the Preacher. Nor can Parents expect to have their Children virtuous, if they be vitious themselves; for, with what face can any Father condemn his Child for any thing which he allows in himself? Besides, there is nothing ill, which naturally Youth doth not more suddenly apprehend then Men; therefore,

The duty of  
Fathers and  
Husbands.

*Maxima debetur puero reverentia, si quid*

*Juvenal.*

*Turpe paras.*—

And ill habits are soon gotten by Children (if they be not carefully observed and restrained) and hardly, if possibly left when they are Men.

## CHAP. VIII.

### Of Domestical power.

I. **T**Here are three sorts of Families; either by Affinity or Alliance, or by Consanguinity, or a Legal or Household-Family. Of such a Family, and of its Cause and Jurisdiction, we shall in this ensuing Chapter treat.

How many  
sorts of Fam-  
ilies there be.

2. A Family is not the cohabitation of divers persons in one house; for then Inmates and Travellers, &c. were subject to the power of the Master and Host. Besides, subjection cannot be, where it depends upon the will of the Subject; when he will, he may choose whether he will obey: But it is evident that Inmates and Travellers may, when they will, cease their subjection by leaving of the house.

A legal family  
is not the co-  
habitation of  
divers persons  
in the same  
house.

3. A Family is contained in the mutual offices of commanding and obeying, of several persons under one head, in the same house: And the same head may be of divers Families; as when a Master keeps servants in two or more different houses.

What a legal  
family is.

4. A Family may consist of *Paterfamilias*, who is Father and Husband, and the head or commanding part of the family of Wife, Children and Servants, who are the obeying part of the family; or of the Mistress of the family who commands, and of Children and Servants who obey.

Of what per-  
sons a family  
(in the largest  
sense) is com-  
pounded.

5. But because a Family may consist, where as parts of the Family there is neither Father nor Mother, Husband nor Wife, nor Children; A Family is properly, where several Servants obey the same Master or Mistress in the same house.

In the more  
proper sense.

6. Servants are twofold, either voluntarily serving with their consent first given; such as are those servants who for such wages serve their Masters

Of Servants.

for



for such a terme ; or where they serve, whether they give consent or not, as where men are slaves, or apprentices. The power which the head of the family has over his Servants, is called *potestas herilis* or *despotica*, the Masters or Mistresses power. We speak first of Masters power over Servants serving for wages.

The Masters power does not arise from the Servants subjecting himself.

7. It is impossible that any man can oblige or subject himself to any man or creature by any Act of his will, for no Act of any mans will can have any power of himself ; *Omnis potentia activa, est principium transmutandi aliud* : every active power is the cause of alteration in another body ; the Act therefore of a mans will, can make no obligation in his body who does will it. Besides, it is against all rules of relation, that to bind and to be bound can be in the same thing ; therefore it is much more absurd to suppose the whole man should be obliged by a part of himself, that is, by his will : Add hereunto, that if a man be obliged to his will, then is the most wilful man, the most just man, and every man is obliged to do any thing because he hath willed it, then which there is nothing can be more immoral and destructive to all society with mankind.

Nor from the Masters accepting his Servants submission. Annot.

8. If the Masters power did arise from the Servants subjecting himself to him, which is an Act of the Servants will, then an Act of the Servants will may have a power and obligation upon his Master, which is absurd, for this makes the Master to obey his Servant.

Yet in usual speaking, *voluntas* is confounded with *conatus* ; as wee say that God did accept *Abrahams* will for the deed, in that he was willing to have offered up his son *Isaac* : whereas in proper speaking, God did will or command *Abraham* to offer up his son ; and *Abraham* did obey ( that is receive or accept Gods will ) and did endeavor, not will ( for it had been unnatural and murder in *Abraham* to have willed without cause the death of *Isaac* ) to have done it, when God restrained him, and so God was pleased to accept of *Abrahams* endeavor to have pleased him : And so when any servant does endeavor to do his Masters will, though he be not able to perform it, yet ought the Master to accept it, because he does what he can ( not to do any act of his own will, but ) to perform an act of his Masters.

The Masters power does not arise from the Servants promise.

9. But suppose the Declaration of the Servants will, does evade into his promise given to his Master, yet cannot the Masters power arise from thence, because men are obliged to the performance of their promises by the Law of nature only, and that Law does oblige only in Conscience, but the Masters power obliges to corporal punishment : I say therefore, that no Masters power arising from any Act of the Servants will or promise, nor from the Masters acceptance, no Regal power can arise from the Princes acceptance of their Subjects submission ; for a great family is a kingdom, and a little kingdom is a family, saies *Tho. Hobbes*, cap. 8. art. 1. de Cive.

The Masters power does not arise from the Law of Nature.

10. If the Masters Power did arise from the Law of Nature, then were the power of a Master over his servant eternal, and incommunicable ; but the contrary of this is evident in all places of the world ; for there is no place where the Power of Masters is not only dissolvable by the Laws, and consents of the Master and Servant ; but where it is not slavery, there the Masters power is terminated to years, moneths, weeks, daies, or houres, &c. which expiring, the relations of Master and Servant are dissolved, the Masters power therefore is not from the Law of Nature.

11. If the Masters power did arise from Divine positive institution, then, where Gods revelation of himself in the Scriptures is not received and believed, have Masters no power over their Servants. But this is evidently false; for not only before Gods revelation of himself in the Scriptures, had Masters every where power or dominion over their Servants, but also every where in the world Masters have power over their Servants, as well where the Scriptures are not received, as where they are: The Masters power therefore does not arise from Divine positive institution.

Nor by Divine positive institution.

12. *Nascitur servus*, says *Aristotle* most truly: There was no man that was ever born in the world (unless a posthumous King) but was born in a threefold subjection; first to the Laws of God, secondly to the Laws of his Parents, and thirdly to the Laws of his Country: And the Laws of every Country obliging men to the performance of their pacts and contracts, the Law of the place is the efficient cause, by the Contract of the Master and Servant (being the instrumental causes) of the Masters power; and not only gives the Master a power over his Servant, but also obliges the Master to perform all his promises specified in the Contract to his Servant.

From whence the Masters power does arise.

It is evident therefore, that where there is no precedent Humane Law obliging, there cannot be any Family; for, the Law, by the Masters Contract with his Servant, gives him the power over his Servant. All *Grotius* his Government then, founded upon the Contracts of Men, is utterly false, and by consequence no one true Proposition can follow from thence. Yet truly, it is an error pardonable in him, who with his first milk sucked in this Popular principle: No question but he was a man as eminent in Humane learning, as any man of this last Age, and I doubt not but of a sincere and peaceable disposition. It is the excellency of Truth, that it is plain and easie to be perceived; whereas Falshood, with all art and learning, is rendred more obscure, by how much more is added to it. And it is strange for a stander by to see what monstrous absurdities *Grotius* runs into, to uphold his fabrick: For he makes God, at the Creation and Flood, to give Mankind a natural right, viz. all men alike, over all things, and this natural right to be immutable by God himself; and yet without giving any reason for it, he makes it mutable by the will of man; and Dominion, which he there says was brought in by the will of man, he says is *Jus naturale* too: So *Jus naturale* does signifie that which God gave to mankind; and *Jus naturale* does signifie that which mans will brought in contrary to what God gave to mankind, then which what can be more absurd?

Annot.

lib.2.cap.2.

par.2.

lib.1.par.19.

But Mr. *Hobbs*, cap.2. art.9. makes a Contract the act of two or more mutually transferring their rights; and a Pact to be, when one or both is trusted, and he who is trusted, does promise that he will perform; and supposeth the *Civitas* institutive, to take its first being from the Pacts of men: Which will not help him; for such Pacts, as well as Contracts, receive their obligation from precedent humane laws: And therefore all his book *de Cive*, which is derived from this begging the question, is false. Indeed, Mr. *Hobbs* is, no question, a man of most exquisite parts and learning, and possibly might have a peaceable intention in making the *Civitas* the Judge of all matters of faith as well as manners: But sure, many things in his generation of it can never consist; as his making *Jus* and *Lex* contrary one to another, his making the Legislator to depend upon the Citizen, for without his consent and proper pact either express or understood, the Legis-

Annot. 2.

lative



Cap. 12. art. 3. lative right can be conferred upon none: And yet he says, *Wherefore doest thou call him Tyrant, whom God hath made King?* His making the *Civitas* to receive all power from the pacts and wills of men, and making the *Civitas* Head of the Church, and Judge of Faith, makes the power of the Church and all Faith to be a thing invented, and to receive their beginnings from the wills and pacts of men; then which, what can be more destructive to Faith and Religion? But for our Author *Tho. White Gent.* he is not worthy the name of a learned, rational, nor honest man.

Slaves.

Condemned persons.

Prisoners by War.

lib. 1. c. 5. p. 31. de repub.

Pag. 46. de rep.

Slavery moderated.

Apprentices.

13. Slaves are born, or made so. Slaves born, are the children of such as were so. Slaves made so, happen two ways: For being condemned for some crime committed against some humane Law, and therefore by the Law condemned to it. Where the Law condemns, it is the will of the Supreme power which condemns, and therefore not the will of the Slave that makes it so: I deny therefore that where the Law does not make Slavery, any man can make himself a slave to another; nor can any man use another as a Slave, where he is not made so by Law.

Or else, Slaves are Prisoners taken in War. There is no man will affirm, the taking of another man prisoner, gives the taker a power over the others life; for then all men falling into the hands of Thieves and Pirates, the Thieves and Pirates have a power over their lives, and so commit no murder in putting them to death: But Slaves from being made Prisoners, is, when there is competition between two Supreme powers, and they give their Subjects power over all their Enemies which they shall take Prisoners. It is not therefore the taking of another Prisoner, which gives a man power over anothers life, but a precedent humane Law which gives this power over those Enemies, which any Subject shall take Prisoner, (and sure no man was ever taken Prisoner by an act of his will.) It is false therefore that *Bodin* says, *That a man may make himself a Slave of his own accord,* (a man may as well offer violence or kill himself) and that a man bought for a price of Thieves and Pirates, is a Slave to the Buyer; for he is not made so by any humane law: Nor can any act of force, ever give another any power; nor can any continuance of time make any thing good which originally was not so; and therefore if all commands were originally from force, as he affirms, then are no commands now any better, and so no difference between the commands of Thieves and Pirates, and of Fathers and Kings. Although a man lawfully taken prisoner by another, be in his power, so as it is in the Takers power to have taken away his life, and so an act of grace in granting it; yet the Law which originally gave this power may moderate it, as here in *England* the Law hath restrained the Lord from killing or maiming his Vilain. Slaves have nothing proper against their Master.

14. Apprentices are, when the Father or Mother do oblige a Child for such a term to serve such a Master; and this act is binding, because by the Law of Nature the Father hath an absolute power over his Children: But because of the impotencie of Children, who cannot by reason of their youth, and want of art and experience, do any thing which may at first compensate their diet and clothes; if the poverty or negligence of parents be such, that they cannot or will not procure a Master for their Children; and where Children are Orphans, they may be bound and compelled to serve Apprentiships in such manner as is prescribed by the publique humane Laws of the place.

15. Neither

15. Neither *naturalis*, nor *delegata potestas* can be communicated nor aliened: But *acquisita potestas* (as the power of Masters over their servants and slaves) may be sold, aliened, or otherwise given away: And therefore Guardian in Chivalry may give or sell to another the Guardianship of his Ward; but Guardian in Socage cannot, for his is *delegata potestas*.

What power is alienable.

16. The Master of every family deriving his power from the humane laws of every place; his power is restrained to the laws of that place; therefore ought he not to command his servant any thing which is against the laws of the place: When I say, by humane laws such a thing is to be done, or not done; I always except those laws which God did give to the Israelites, and peculiar only to them, when he pleased immediately to reign over them; which laws did supply those humane laws, by which his Vicegerents do procure peace among us.

The Masters power restrained to humane laws. *Caveat.*

CHAP. IX.

Of Ecclesiastical power.

**T**HAT there is a *GOD*, who is the Author of all good past, present, and to come, and that He is to be worshiped and adored not only for the present, past, and future blessings in this world, but also in hope of eternal happiness in the world to come; is so naturally ingrafted into the minds of all men, that not scarce one man (*compos mentis*) in an age did ever deny it: It is no wonder therefore, if men attaining to such a height of impiety as to sell their inheritance in Heaven, unjustly to purchase possessions upon Earth, do always make the specious pretences of Religion and Reformation (as the easiest way to work upon the giddy and inconstant multitude, *carried hither and thither with every wind of doctrine*) the *Exordium* of all their Enterprises; for,

By the light of nature, God is to be worshiped.

That there is a God, and this God to be worshiped and served, is innate in the minds of all men, *Plato*, *Euthyphro* requires as the first axiom of all virtue.

— *Quoties vis fallere plebem,  
Finge Deum.*

2. But how they should worship him aright, from the imperfect use of their reason, prejudiced by their appetitions and affections, is not to be imagined: For, to worship and serve God not according to the will and pleasure of God, is superstition; and not to worship God, is atheism. It is therefore an impossible thing, without the special assistance of Gods grace, that men should not fall either into superstition or atheism.

The difficulty of pleasing God from the light of nature.

3. It being impossible that any act of mans will can please God, be it what it will, (for *Saul* intended well in sparing *Agag*, and the best of the cattle of the *Amalekites* for a sacrifice to God; and *Uzzah* in staying the Ark:) God therefore by the light of humane nature being to be served, and yet not according to the will or fancy of any creature; what then is left, but that he will be served accordingly as he hath revealed himself to mankind? For, *without faith it is impossible to please God*; and faith is the believing in God as he hath revealed himself to mankind, conjoined with the love of it.

How God will be served.



Gods revela-  
tion to Adam.

4. In the beginning of the world, God revealed himself to Adam, that he would be served and obeyed by him, in abstaining from eating of the *Tree of the knowledge of good and evil*, Gen. 2. 17. It is worth the observance, that the Knowledge of good and evil, is in it self a thing to be desired and endeavored, so as it be done in obedience, not disobedience to Gods command. God therefore in punishing Adam, learns all men this lesson, that in all his commands he will be simply and absolutely obeyed, without any disputing whether it be good or bad to obey him. But Gods covenant with Adam, Adam soon made void, by eating the forbidden fruit: God sent him forth therefore from the garden of Eden, to dress the ground from whence he was taken.

God did reign  
by covenant  
with our fa-  
thers before  
the flood.

5. God is said to reign by covenant, where he reveals himself how he will be worshiped and served. The Scriptures are silent how God did reign with our fathers before the Flood; but that God did, is evident: for it was not Abels sacrificing to God, which pleased God, for Cain sacrificed as well as Abel; but by faith Abel offered unto God a more acceptable sacrifice, Heb. 11. 4. and the doing of any thing by faith, is the doing it in conformity to Gods command, as he hath supernaturally revealed himself: God therefore must first command (or reveal himself) before Abel can do any thing by faith: And Enoch walked with God; and Noah was a just man and perfect in his generation, and Noah walked with God. Enoch's and Noah's walking with God, was nothing else but walking with, and doing what God had commanded: And where there is no Law, there can neither be Justice, nor transgression: Therefore could neither Noah be just, nor the sons of men so malicious against God, that all the imaginations of the thoughts of their hearts were only every day evil; if God, for Adams sin, had only withheld his grace from Mankind, and not revealed himself unto them; for then men had sinned of infirmity, but here they sinned maliciously.

Gen. 5. 22.  
Gen. 6. 9.

Gen. 6. 6.

God did reign  
by covenant  
with Noah  
and his po-  
sterity after  
the flood.

6. God did establish a covenant with Noah and his sons after the flood, in this form, Gen. 9. 9, 10, &c. Behold I, even I establish my covenant with you, and with your seed after you, and with every living creature that is with you, in fowl, in cattel, in every beast of the earth which is with you, of all that go out of the ark, whatsoever living thing of the earth it be; And my covenant I make with you, that from henceforth all flesh shall not be rooted out by the waters of a flood, neither shall there be a flood to destroy the earth any more: And God said, This is the token of my covenant which I make between me and you, and every living creature that is with you for ever; I do set my bowe in the cloud, and it shall be for a token between me and the earth, &c. Yet Mankind did distrust God, and said, Go to, let us build a city and a tower, whose top may reach unto heaven, and let us make us a name, lest peradventure we be scattered abroad upon the whole earth. So that Wisdom says, Moreover the nations in their wicked conspiracie being confounded, she found out the righteous and preserved him blameless with God.

Gen. 11. 4.

Sap. Solom.  
10. 5.

Gods cove-  
nant with  
Abraham.

7. Yet God was so merciful unto Mankind, as not utterly to forsake them, but established his covenant with Abraham and his seed: I will make my covenant between me and thee, and thy seed after thee in their generations, by an everlasting covenant, that I may be a God unto thee & thy seed after thee, &c. Gen. 17. 7, &c. This is my covenant which you shall keep between me and you, and thy seed after thee; Every man-child among you shall be circumcised, &c. God did not make any new covenant with Isaac and Israel, but renewed that

that

that which he had made with *Abraham*; and by this covenant the Israelites were not to serve God as God simply, but as the God which had appeared and made a covenant with *Abraham*, *Isaac* and *Israel*. Under this covenant God by *Moses* gave the children of *Israel* the Moral, the Judicial, and Ceremonial law; and under this covenant was the *Messias* promised; and prophesied of by all the Prophets.

Mr. *Hobbs*, cap. 16. art. 13. says, The supreme power, and also the interpretation of Scripture was in *Moses*, while he lived, and not in *Aaron*: Nor do I gainsay it; for, *Moses* was of the Tribe of *Levi*, as well as *Aaron*: Besides, what should hinder but that God, when he pleased, might give that to *Moses*, which ever after should be inseparable from the High Priest. But where he says from *Num.* 27. 18, 19, 20, 21. that *Eleazer* was not only High Priest, but also had the supreme power, because that when *Eleazer* had enquired of God, *Joshua* and all the people should go in and out at his word; It does not follow; for then had neither *David* nor *Saul*, &c. the Sovereignty, who asked counsel of God by the High Priest. It is true, that was Magisterial in *Eleazer*, which was Ministerial in *Aaron*: It is true which he says, that *Joshua* had but part of the power which *Moses* had: But if it be true which he says, that both powers were in *Eleazer*, then had *Joshua* none of the power which *Moses* had: But that *Joshua* had all temporal power, and not from *Eleazer*, both in command of war and governing the people, is manifest every where in all the book of *Joshua*; neither had *Eleazer* any thing to do with the division which fell to the Israelites by lot: Behold, *Joshua* said, I have divided unto you by lot, those nations that remain, &c. which thing does belong only to the supreme Temporal power. And whereas he says, After the death of *Joshua* in the time of the Judges unto King *Saul*, it is manifest that the Regal right instituted by God remained with the High Priest; sure he will not deny that the supreme power was in *Deborah*, and yet sure he will not affirm that she had the Sacerdotal power.

And whereas Mr. *Hobbs* says, That the Kings of *Israel* had power over the High Priests, and instanceth in *Solomon*s deposing *Abiathar*; If he means that they had power over their persons, he disputes without an adversary for me: But it does not follow from thence, that they had the Sacerdotal power in them; for *Solomon* did restore *Sadoc*, who was of the line of *Eleazer*, to whom he ascribes so much power, whereas *Abiathar* was of the family of *Ithamar* (one of *Aaron*s younger sons, whereof *Eli* was the first.) And he may as well infer that the Regal power was subject to the High Priest, because *Jehojada* restored *Jehoash* after he had slain *Athalia*. And whereas he says, That the Kings being constituted, there is no doubt but both powers were in them; It is false: For, if the Sacerdotal power were in the King, then might the King execute his power; but *Uzziah* transgressed against the Lord his God, when he went into the temple of the Lord to burn incense upon the altar of incense: For, as *Azariah* the Priest told him, It appertaineth not unto thee, *Uzziah*, to burn incense unto the Lord, but to the Priests the sons of *Aaron* that are consecrated to burn incense, &c. See *Num.* 18. 7. & *Exod.* 30. 7. And the Lord smote him with leprosie, and *Ahaziah* thrust him out, v. 20. See the manner more at large, *Joseph. lib.* 9. cap. 11. de antiq. *Judaor.* And *Saul* was therefore rejected from being King, because in case of extreme danger he did offer sacrifice, 1 *Sam.* 13. 14.

Annot.

Note this; for Mr. *Hobbs* does.

A. 15.

Cap. 11. ar. 16. Prope finem.

Jos. de antiq. Jud. l. 8. c. 1.

cb. 16 art. 16.

2 Chro. 26. 16.

ver. 18.



The new and  
last Covenant  
and Revelati-  
on of God to  
Mankind by  
his Son.

7. That our Saviour Jesus Christ, God and Man, foretold by all the Prophets, most especially by that most noble Prophet *Isaiah*, (descended from the Kings of *Judah*,) took our nature upon him, in *Augustus Cæsar's* reign, when *Janus* Temple was shut, and an universal peace over all the world, who by himself once offered for us under *Pontius Pilate* the deputy, was a fulfilling of the ceremonial Law, (being but a type of him to come) and a sufficient propitiation and satisfaction for the sins of the whole world believing on him, being the foundation of all Christian faith, I will not dispute.

Note Bene,

Note Reader that our Saviour being the Prince of Peace, this Prince of Peace, was born into the world when there was an universal Peace; so being the King of Peace was born (as if there could be no peace without it) when as there was none but Monarchy (and that not elective) in all the world.

What Order  
our Saviour  
took in his  
life time, for  
executing of  
his last Will  
and Testa-  
ment and how  
executed.

8. But because *parum est lex, nisi sunt qui possunt jura gerere*, it had been to no purpose for our Saviour to have made his last Will and Testament, if he had not made Executors to have executed it, he chose and ordained twelve Apostles, & seventy Disciples or Evangelists his Executors: note, that in the Gospels, the Evangelists are usually called Christs Disciples as well as Apostles, but the Disciples the Evangelists are never called his Apostles; ) After our Saviours passion St. Peter in his exhortation for the choosing of another in the place of *Judas*, who had betrayed his Master, saies, *Acts. 1. 20. Let his habitation be void and no man dwelling therein, and his Bishoprick τὸ ἐπίσκοπον let another take.* Here the Apostles (who are also called Disciples) appointed *Joseph* and *Mathias*, but the lot fell upon *Mathias*; these Appostles created seven Deacons. *Acts 6. 6.* chosen by the multitude, after prayer, having laid their hands upon them. *Peter* and *John*, *Acts. 8. 17.* confirm and lay hands on the *Samaritans* converted by the preaching of *Philip*. *Saul* is called to the Apostleship after he was stricken blind, and had seen Jesus whom he had persecuted, *Acts. 9. 3, 4, 5.* *Barnabas* was sent to confirm the beleivers converted by them who were scattered upon St. *Stevens* persecution at *Phenice* and *Cyprus*, *Acts. 11. 22, 23.* *Paul* and *Barnabas* confirm the Soules of the Disciples, and ordain Elders in every Church, *Acts. 14. 22, 23.* *Paul* said to *Barnabas*, *let us visit our brethren in every City where we have preached, Acts. 15. 36.* neither can it be shewed that any in the *Acts*, did ordain, lay on their hands, confirme or visit, but only the Apostles; so that as Apostles, that is, men sent not only to preach, confirm, ordain, visit, &c. every where, were none made but by our Saviour; For St. *Paul* and *Barnabas* were miraculously chosen by him; And the Lot fell upon *Mathias*, *Acts. 1. 26.* and the Lot is of the Lord.

*Acts. 15. 2.*

Our Saviours  
promise to  
his Church.

9. But because our Saviour would not leave his Church in so short-lived a state as to be but of one Ages continuance (God having left with the *Jews* sufficient power for the propagation of the *Jewish* priesthood, untill all should be fulfilled by our Saviour) he saies, *Behold I am with you even unto the end of the world, Amen, St. Matth. 28. 20.* But preaching the Gospel, ordaining, laying on of hands, confirming, &c. are necessary fundamentals for the constituting of a Christian Church unto the end of the world, &c. Our Saviour therefore will be with his Church unto the end of the world in Preaching the Gospel, in ordaining, laying on of hands, confirming, &c.

The Apostles  
did ordain  
Bishops,  
Presbyters,  
and Deacons.

10. It being evident that the Apostles did preach, ordain, &c. our Saviour having promised to be with the Apostles and Disciples (i. e. the Church) unto the end of the world, therefore after the Apostles, preaching the

the Gospel, ordaining, &c. should be in the Church, let us see to whom our Saviour did bequeath this ghostly power after the Apostles. The Apostles did ordain Bishops, Elders, and Deacons, *Episcopos, Presbyteros, Diaconos*: That Presbyter is not the name of Age, but Office, is most manifest; for when St. Paul had ordained Presbyters or Elders in every City, sure he made them no elder then they were; Besides he made Timothy a Presbyter when he was but a young man, 1 Tim. 4. 12.

AB. 14. 21.

10. As our Saviour did usually call his Apostles his Disciples, but never called his Disciples or Evangelists his Apostles; so the Apostles did usually call Bishops, Presbyters, but never called Presbyters, Bishops. As Act. 20. 17. whom St. Paul calls Elders of the Church, v. 28. he calls *ἐπιστάτους*, and St. John the Apostle Ep. 2. 3. v. 1. calls himself the elder. It is true therefore that every Bishop is (or at least ought to be) a Presbyter, but every Presbyter is not a Bishop: For St. Paul saies, Against an Elder or Presbyter receive not an accusation, but before two or three witnesses, 1 Tim. 5. 19. But equals cannot judge equals, therefore Timothy as a Presbyter could not judge a Presbyter, therefore he should judge him as being Bishop, and so by consequence Presbyters are subject to the judgment of Bishops (that is in Episcopal jurisdiction.) Besides, Bishops have power of ordination of Presbyters in every City, 1 Tit. 5. 1 Tim. 5. 22. but it is no where found that ever Presbyters did ordain Bishops. It is not therefore Ecclesiastical practice only, that is, the universal practice of all Christians in all ages untill John Calvin, but the institution of our Saviour, by which Bishops do excell and govern Presbyters. It was after the destruction of Jerusalem, that *Episcopi & Presbyteri capere appellari Pontifices & sacerdotes*, as the most learned Estius observes; and that the name of Priest is not a Jewish word, is evident, for Melchisedech was not a Jew, and yet a Priest; and our Saviour a Priest for ever after the order of Melchisedech.

The difference between a Presbyter and a Bishop.

Distin: 24. l. 4. pag. 35. 36.

11. What St. Paul in the end of his Epistle to Timothy, calls Bishop of the Ephesians, St. John Revel. 2. 1. calls Angel of the Church of the Ephesians. So St. Paul and St. John understand the same thing by Angel, and Bishop; but *Angelus* and *Apostolus* are the same, and therefore *Episcopus* and *Apostolus* are the same. But what need that be proved by deduction, which the Apostle, Gal. 1. 19. expresseth: For James was none of the twelve, yet being Bishop of Jerusalem, St. Paul testifies him to be an Apostle. Besides it is evident, *Episcopatus* is the office as well of an Apostle as a Bishop, Act. 1. 20. There is therefore no difference between an Apostle and a Bishop; only Apostles constituted by our Saviour, had their function universal, whereas the Bishops or Apostles ordained by the Apostles, had but a Topical function, that is, the exercise of their power was restrained to their City or Diocese: And all Ecclesiastical writers do affirm that St. James did preside in the Council of Jerusalem, although St. Peter with other of the Apostles were Members of it.

An Apostle and Bishop the same.

12. Our Saviour having promised the ghostly power of Confirmation, Ordination, &c. to be with his Church to the end of the world, and the power of Ordination, Confirmation and Excommunication, being bequeathed only to the Apostles, the power of Ordination, Confirmation, and Excommunication descend only to the Apostles successors, viz. Bishops rightly ordained.

The Power of Bishops, which Priests have not.

13. Not the voice and letter, but the genuine and true sense of the Word

Of the interpretation of Scriptures.



Word of God, is the Canon of Christian Doctrine; for the minde cannot be governed by Scriptures, unless understood. It is necessary therefore that Scriptures be interpreted before they be made a rule. It will therefore follow that either God hath left a Power which may interpret Scripture, or else that God hath revealed himself to Men without sense or meaning; but the latter of these is most false and blasphemous, therefore it is true that God hath left a power upon earth which may interpret the Scriptures.

The Scriptures cannot be interpreted by themselves, that is, one place by another.

14. If the Scriptures were as Arts and Sciences, which are derived from higher Principles or Axiomes, which though they cannot be proved (but are as *Aristotle* calls them, indemonstrable propositions) yet are so clear and manifest, that no exception can be taken to them, then indeed the Scriptures as well as Arts and Sciences, might be proved, one place by another, untill they were resolved to their first Principles; which though granted, cannot be proved. But it is far otherwise with the Scriptures, for there is no Scripture which is not of like Authority with any other, every Scripture being the Word of God; one place of Scripture therefore cannot be interpreted by the consequents which may follow from another, any more than the consequents which follow from — *Quæ eadem sunt aqualia, inter se sunt aqualia*, may be interpreted by *Omne totum est majus sua parte*.

Not all they who do translate the Scriptures are the interpreters of them.

15. There is no prophesie of the Scripture of any private interpretation, 2. *Pet.* 1. 20. It is not therefore every one, who can translate the Scripture out of one language into another, with his own private conceptions upon them, which renders them to be interpreted by him. What then? hath God revealed himself to mankind in general without sense or meaning? No, it does not follow; for as in temporal Laws, no man can interpret them but he that made them, either by himself or them whom he shall constitute, yet every man may by his reason and discourse direct his own actions in conformity to those Laws; but if he shall do any act upon misconstruction or interpretation of his own, his mistaking the meaning of the Law shall not excuse him: So private men may endeavor to direct their actions accordingly as they suppose God hath directed them in the Scriptures, yet if upon their own heads they undertake to interpret the Scriptures (although in order only to their own actions) their misunderstanding the Scriptures, shall never excuse any unjust act.

To whom the Authority of the interpretation of Scripture doth belong.

16. Every Law of God is the Word of God, but every Word of God is not the Law of God; as *Jacob* went into *Egypt*, is the Word, but not the Law of God: The Scriptures contain Political, Historical, Moral, and Natural things; which are not rules of the mystery of Christian Faith and Religion. Those things which concern Morality and Temporal power and Government, our Saviour made no alteration in them; for he saies, *Sr. Matth.* 5. 17. *Think not that I am come to destroy the Law or the Prophets, I am not come to destroy, but to fulfil.* And therefore, *quid est homicidium? quid furtum? quid sit meum vel tuum? &c.* belongs to the Temporal power, as much since our Saviour as before; and truly I do not think I should do the Church of *England* any wrong, if I should with *Lindwood* affirm, that not only the Probate of Wills, but also the cognisance of Tithes was in the Church *ex consuetudine Angliæ*; but those things which relate to mysteries of Christian faith; as our Saviors being the Son of God, took humane nature upon him, and was born of a Virgin, preached repentance, died upon the cross for the finnes of the world, rose again the third day, &c. God to make his power known,

known, by the preaching of a few mean men and Fishermen, and from the mouths of babes and sucklings (all Temporal power not only not permitting, but contradicting it) converted the world to Christianity: And although our Saviour gave power to all his Disciples to preach the Gospel, yet only to the Apostles *He expounded the Scriptures, beginning at Moses*; And it was the Apostles understandings which he opened, that they might understand the Scriptures. *And the spirits of the Prophets are subject to the Prophets*: Our Saviour therefore having promised the continuance of all ghostly power in his Church, and having given the power of the interpretation of the Scriptures (that is, those Scriptures which concern him immediately) only to his Apostles, the authority of the interpretation of the Scriptures is continued only in their successors the Bishops: *As my Father sent me, so send I you.* Luk. 24. 27. S. Joh. 20. 21.

17. Our Saviour being the Head of the Catholique Church, therefore all the body of the Church cannot make one Article *de fide*; and, *Whoso shall go about to adde or diminish from the prophesie of the book of life, God shall plague him, and take away his part from the book of life,* Rev. 22. 18, 19. Yet where he gives command to his Church to do any thing, but gives it no direction how it should be done, as, *Let all things be done decently and in order,* 1 Cor. 14. 40. there he gives the Church a power to make laws for the execution of his command: for, decency and order must presuppose laws and directions; and where there are no laws, there things must necessarily be done indecently and disorderly. It therefore belongs to the magisterial or governing part of the Church (that is the Bishops) to make laws for the decency and order of the Publique service of God, Consecration, Sacraments, things offered up to God, and Rites of Marriage. To whom the right of making Ecclesiastical laws belongs.

18. It was only to *Timothy* as Bishop of the *Ephesians*, that *S. Paul*, 1 Tim. cap. 2. exhorts, that first of all *prayers, supplications, intercessions, and giving of thanks be made for all men.* Therefore to Bishops it only belongs: And *S. Ambrose* his Liturgy is continued in *Milan* to this day, if no alteration were since the Council of *Trent*. To whom the composing of Publique Liturgies belongs.

19. The next Order in the Church of Christ to Apostles and Bishops, is that of Presbytery or Priesthood, as *S. Paul* says 1 Cor. 12. 28. *God hath set some in the Church, first Apostles, secondly Prophets, thirdly Teachers.* The Sacerdotal or Priestly power, in most things is the same with Episcopal or Pontifical: as, both of them have power to consecrate the Sacrament of our Lords Supper, and give it to the Laity; both of them have power of Absolution and Remission of the sins of believing and repenting sinners; both have power of Benediction, of offering up the service of the Church; both of them have power to preach the Gospel, that is, preach what our Saviour, the Apostles and Evangelists taught, and what Interpretation the Church hath made; both have power of publique baptizing Infants; both have power of visitation of the Sick, celebrating Marriage and pronouncing man and wife: But Ordination, Confirmation, Excommunication, Interpretation of Scriptures, (And therefore if any Priest preaches any other Interpretation of the Scriptures, than what the received Interpretation of the Fathers of the Eastern and Western Churches have made, and the Councils of the first 400 years after our Saviour, which Interpretation is received and acknowledged by the Bishops of the Church of *England*, the Bishops by the testimony of two or three witnesses may judge him:) Visiting Parochial Congregations, composing Publique Forms of Prayers, Consecration of Churches and things offered up to God, belong only to Bishops. Of Priests and their function.



Of Deacons  
and their  
function.

AE. 8. 12.

1 Cor. 12. 28.

What is a  
Church.

A National  
Church.

The Catho-  
lique Church.

He that denies  
the authority  
of the Church  
denies the  
authority of  
the Scri-  
ptures.  
S. Luk. 10. 16.

Annot. 1.

Annot. 2.

20. Deacons are almost in the same proportion to Priests, as Priests are to Bishops: Deacons may preach the Gospel, which is evident, for the *Samaritans* were converted by the preaching of *Philip*. A Deacon is the Minister of Bishop and Priest, to assist them in offering up the Publique service of the Church, in giving the Cup after them in the Sacrament, in taking the offerings of the Priest, in the Visitation of the sick, in Publique Baptism: But a Deacon cannot consecrate the Sacrament, pronounce Absolution nor Benediction; and these three, no question, are the Orders which *S. Paul* calls, first Apostles, secondly Prophets, thirdly Teachers; for in all things, but only preaching and baptizing, a Deacon is the Minister of the Priest and Bishop.

21. *Ecclesia*, says *S. Cyprian*, *est plebs episcopo adunata*; or as the Church of England hath defined it, a Church is a Bishop, Curates, and Congregations committed to his charge. Every Congregation being a Parish (that is, a Priest rightly instituted and inducted, exercising his function, and the inhabitants of that Parish conforming themselves to the rules of the Bishop.) *Una ecclesia plures episcopos non habet, plures presbyteros habet*. And therefore *S. James* says, *If any among you be sick, let him call the elders of the Church*, cap. 5. 14. such was the Church of *Ephesus*, of *Smyrna*, *Laodicea*, *Antioch*, &c. and such is the Church of *London*, *Rocheſter*, &c.

A National Church, is the aggregation of several Churches in one Kingdom, in the same form of Liturgy, Doctrine, and Publique Worship of God: such are the Churches of *Greece*, *Moscow*, *England*, *France*, &c. The Catholique Church, is all Christian Churches united to one Head Christ Jesus.

22. He that heareth not and obeyeth not the Church, is to be accounted as a Heathen man, *Matth. 18. 17*. And what is a Heathen man, but he which denies or believes not the Scriptures? Nor is it men, which men despise and set at nought in despising the Church, but God and Christ himself; for, *He that despiseth you, (viz. them sent by Christ) despiseth me; and he that despiseth me, despiseth him that sent me*.

That Regality is a sacred order, being an institution of God, *Gen. 49. 10*. and every King the *Lords Anointed*, is in more then thirty places expressed by God himself. It is therefore, I conceive, why the Church of *Rome* allows Kings the Sacrament in both kinds: But how Kings, as being Christian, can have any ghostly power, (instituted by our Saviour to be only in his Church, and that only by such means as he hath prescribed) I do not understand: For, Kings, as Kings, are no essential part of Christs Church, and therefore cannot create ghostly power. And this King *James* confessed, as you may read in *Spotswoods History*, p. 514. And if Kings by becoming Christian, have ghostly power, then is the power left by our Saviour to his Church, not only weakned by Kings being converted to Christianity, but also divided, which is absurd. But if *Solomon* his offering a peace-offering for the people, and his blessing the people, be objected; I answer, it does signifie no more then a fathers blessing his children, and praying to God that they may live peaceably: But none of the Kings did ever offer a sin-offering or burn incense to the Lord, without reprehension by God.

Out of this it is evident, that God never forsook men, before they first did forsake him: *Adam* did first eat the forbidden fruit, before God drove

drove him out of *Paradise*, and cursed Mankind, and the ground for his sake; Then mankind sinned maliciously, before God brought the general *Cataclysm* upon them; and they made a wicked conspiracy, before God confounded them at *Babel*, but none were more maliciously stubborn than the *Jewes*, who when they were enjoined to observe the Ceremonial Law, scarce ever observed it, but went a whoring after the Gods of the Nations, *Moab, Ammon, Ashteroth, &c.* yet since our Saviour hath fulfilled it, never did men so superstitiously observe any thing, as they have done it. And now Oh that I could more then powre forth all *Jeremies* lamentations, in commiseration of thee O my Mother Church and Native Country, much more deserving it then the *Jewes*, in the *Babylonish* Captivity! for *Jeremiah* foresaw their return and restitution, whereas I cannot hope but that Christianity it self is in the very wayne here among us: For not only Bishops and Priests are therefore hated, because they are Christs Ministers; and Puppets Mountebanks, and Tryers, set up in the place of them; and not only all the carved works in the houses of God, in despite of God, are beaten down with Axes and Hammers, and the houses themselves destroyed and made stables for horses, but all the solemn days kept in commemoration and gratitude for our Saviours, Nativity, Passion, Resurrection, Ascension, &c. in despite of Christianity decayed as superstitious, &c. Sure as glorious Christian Churches as ever were in *England*, have been in *Africa, &c.* where (were it not for some poore Christian slaves) there is not so much as any footsteps of Christianity left.

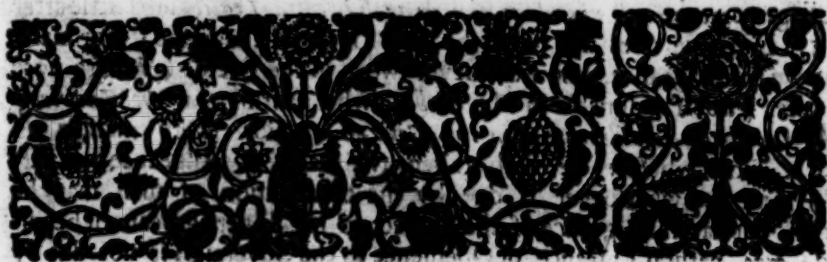


### The Contents of the Third Book.

**T**he First Chap. contains the causes of Subjection of Subjects to Supreme Powers, of Subjection of Children to Parents, of Servants to Masters, as also to them who have oversight over us in the Lord.

The Second Chap. treats of Succession of Princes in Hereditary Monarchies, and discovers the fiction of the Salique Law in France; and that it was a meer invention to exclude the just title of the Kings of England, and has been ill observed by the French themselves, when it did not conduce to their advantage.

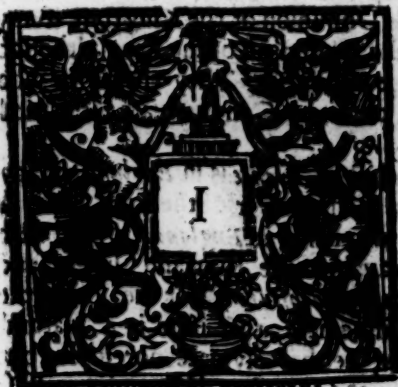
The Third Chap. treats of the Municipal Laws of my dear and native Country, before they became invaded and subverted by those men, who in so many several shapes since 1640. have arrogated to themselves the name of Parliament.



# THE THIRD BOOK.

## CHAP. I.

### Of Subjection.



It is observed by a Writer, that our Saviour in communicating the Cup to his Disciples, as if he had foreseen that it would be detained from the Laity, gave it in these words, *Drink ye all of it*; whereas in partaking of the Bread he said only, *take, eat, &c.* I am sure it is well worth the observation, that the Holy Ghost as foreseeing the great abuses which should happen in the world, by the specious pretences of Religion, Conscience, the Power of the People or Parliaments, &c. com-

Introduction

mands Subjection to Higher Powers, not in certain cases, but absolutely; and not certain persons, but *every Soul is to be Subject to the Higher Powers.*

Rom. 13. 1.

2. If say, Supreme or Regal Power being from God immediately by the Law of Nature, it does necessarily follow that subjection of Subjects to their Sovereign is due by the Law of Nature; nor can the relations be dissolved but by God himself. I may, I think, without any affectation, affirm, that the Judges in *Calais* were as learned and upright as ever any before or since; let us therefore see their resolutions.

Subjection due by the Law of Nature to Sovereigns.

3. That learned and upright Judges resolve *ut. Ligeance*. Ligeance is true and faithful Obedience of the Subject due to his Sovereign. This Ligeance and Obedience is an incident inseparable to every Subject; for as

What is Ligeance.

soon



soon as he is born, he owes by birthright Ligeance, and Obedience to his Sovereign; *Ligeantia est vinculum fidei, & quasi essentia Legis*, and a little after page 5. Ligeance does not begin by the Oath of the Leete; For many men owe true Ligeance, who were never sworn in the Leete. ( Where note it is false, if not Treasonable in Mr. Hobbs, who affirms that the Knowledge of the Legislator does depend upon the Citizen: For every man, is as much a subject before he hath taken the Oath of Aligeance, as after. ) And see whatsoever is due by the constitution of man may be altered; but natural Ligeance of the Subject to his Sovereign cannot be altered; ergo, natural Ligeance, or Obedience to the Sovereign is not due by the Law or constitution of man. And again, whatsoever is due by the Law of Nature cannot be altered, but Ligeance and Obedience of the Subject to the Sovereign, is due by the Law of Nature, ergo; it cannot be altered. *Et qui abjurat regnum, amittit regnum, sed non regem; amittit patriam, sed non patrem patriam.*

Note.

Pag. 25. tit. 5.

Pag. 9.

Ligeantia acquisita Pag. 5. &amp; 6.

Com. Lit. pag. 88.

Local Ligeance, tit. 3. pag. 6.

Ligeantia Legalis, tit. 4. pag. 6. 7.

4. *Ligeantia acquisita*, or Denization is threefold, First, absolute to them and their heirs. Secondly limited, as when the King does grant Letters of Denization to an Alien, and the Heirs Males of his body, or for life. The third is, when the King by Conquest conquers another Kingdom, or part of it, the *Antenati & Postnati* are Denizens of the Kingdom, or Dominion so conquered. Yet sure under correction, the *Postnati* are not only Denizens but Natural Subjects. For Power and Subjection being by the Law of Nature, all men born in the Dominion of any Sovereign, are his Natural Subjects; and with this does Sir Ed. Coke agree. If a man come into England, and have issue two Sons, these two Sons are Indigent Subjects born, because they are borne within the Realm, that is in the Dominion of the King; but if any be borne out of the Realm, that is out of the Dominion of the King (although of Natural Subjects to the King) they are *alienigena*. They therefore who are *Postnati* in the exercise of the Kings power by Conquest, are his natural Subjects.

5. Local Ligeance is, when any Subject of France is in England, or any English in France, &c. so long as he is in the power of the King, he is *de facto*, his Leigeman. Therefore a Frenchman being in England, joynd with divers Subjects of this Realm in Treason against the King and Queen, and the indictment concluded *contra ligeantiam suam debitam*; For he owed the King a Local Obedience; but if he have issue here, that issue is a Natural born Subject, and it is not *calum nec solum*, neither clymate nor soyle, but *Ligeantia* which makes a natural Subject; and therefore if Enemies possess any fort, &c. the issue borne there is no Subject of the Kings, by as much reason those Subjects borne after Conquest by any King of England, are his Natural Subjects.

6. Legal Ligeance is, when at suit of the King, the Subject takes the Oath of Ligeance to the King, which is; You shall sweare that from this day forward you shall be true and faithful to our Sovereign the Lord King Charles his Heirs, and truth and faith shall beare of life, and member, and Terrene honor, and you shall neither know nor heare of any ill or damage intended unto him, that you shall not defend, so help you Almighty God. The substance and effect hereof is due by the Law of Nature, *ex institutione naturae*; the form and addition of the Oath is *ex provisione hominis*. In this Oath five things are observed.

First

1. For the time, it is indefinite and without limit, *from this day forward*. Five observable things in the Oath of Ligeance.  
 2. Two excellent things are required, that is, *to be true and faithful*. 3. To whom? *To our Sovereign Lord the King and his heirs*. 4. In what manner? *And faith and troth shall bear &c. of life and member*, that is, until the letting out of the last drop of our dearest blood. 5. Where, and in what places ought these things to be done? In all places whatsoever; for, *You shall neither know nor hear of any ill or damage &c. that you shall not defend &c.* So as Natural Ligeance is not circumscribed within any place.

7. Subjection, as well as Regality, being by the Law of Nature; *Quæ Deus conjunxit, nemo sepatet*. And let no man or men ever think to mend what God hath made: For besides the innocent blood which will be shed, besides the rapine, plunder, sacrilegious profaning of all sacred things in the mending, if God in his judgments doth permit seditious men to prosper in their wickedness, so as they suppose they have attained their Ends; yet their Ends never end in peace among themselves: For, abstracting from the general fear common to them all, of the right Heirs recovering his right, it cannot be expected that all Competitors will be pleased; some will think others too great, none will think themselves great enough; They themselves have made a president to evade all subjection and obedience to Laws and Government, by pretending Liberty and Reformation: So that after so much bloodshed, what can be expected but the shedding of more, without ever hoping to have an end? Well therefore says Sir Edward Coke: *Inst. 3. p. 36.*  
 "Peruse over all our Books, Records and Histories, and you shall find a principle in Law, a rule in Reason, and a trial in Experience, That Treason does ever produce fatal and final destruction to the Offender, and never attaineth to the desired end, (two incidents inseparable thereunto:) And therefore let all men abandon it, as the most poisonous bait of the Devil of Hell; and follow the precept of holy Scripture, *Fear God, honor the King, and meddle not with the seditious.*

But it may be objected, That though Subjects Allegiance be natural, or due by the Law of Nature; yet since there cannot be any visible power under Heaven, which can judge between an Usurper and rightful Prince, what rule have Subjects to direct them to whom they owe their subjection or obedience? *Obj. 1.*

It is true, there is no visible Power under Heaven which can judge between an Usurper and rightful Prince, but the Consciences of men: Yet being natural, a man may as well ask how a man shall know whether every Being be of less excellency then the Cause of its being? or that things equal to a third, are equal to one another? I am confident that (where the confusion was not made by Popular rage and usurpation) since the beginning of the world, God did scarce ever leave men so destitute, but they were morally certain to whom they did owe their Topical and Natural obedience. *Sol.*

But if Regal power be the Ordinance of God, and Primogeniture be preferred by the Law of Nature; then can there be but one rightful King in all the world, and he the first-born from Adam; which no man can believe. *Obj. 2.*

I answer, That though Primogeniture be preferred by the Law of Nature, and immutable by the will of Man; yet is not God subject thereunto, but before the Flood, he rejected Cain, though the first-born of Adam, and *Ans.*



Gen. 9. 27.

and made him a Vagabond, and none of the Patriarchs. So in the first age after the Flood, God subjected *Canaan*, although the son of *Ham*, *Japhet's* elder brother, to *Japhet*: And so did God prefer *Jacob* before *Esau*, and *Ephraim* before *Manasses*, and *Solomon* before *Adonijah*: Yet where and when God did not reveal himself to Man otherwise, was ever Primogeniture preferred. Nor can it in reason be expected, that God should be so cruel a Taskmaster to require subjection upon penalty of Damnation, if it were not evident to whom this subjection were due. It is sufficient that Subjects pay their obedience to him, against whose title no just or superior title can be taken. Yet is not this subjection always to be understood of active subjection; For no man is bound (Government being intended for mans preservation, not destruction) actually, so to submit to rightful Governors, that he be morally certain of destruction therefore: Yet ought every man rather to suffer death, then actually to renounce or resist rightful Governors, to whom by the Law of Nature they owe obedience.

Quere.

8. But suppose there be such a succession from an Usurper, that not only the Heir to the Usurper, but all men in his Government were born Subjects to him and his Ancestors from whom he is descended; as in the time of *Henry 6.* when all men were born either in subjection to him, his Father or Grandfather, (who had no colour or title to the Crown) whether in such case may Subjects so born assist such a Prince against the right Heir? I say, I pray God avert the like from ever being again in the English Nation! 'Tis true, the right Heir hath a just title of war against such a Prince: but whether Subjects so born (their being so born, being no act of their will, but was caused by a higher cause, viz. the will of God) may actually assist him to whom they were so born in subjection, against him who hath the superior title, I leave to God and mens consciences.

Diversify.

9. But this *Quere* can only have reference to Subjects who are born in Hereditary Monarchies; for in Aristocracies and Democracies there neither is, or ever was any original right or power in them, but their Conventions do necessarily depend upon an antecedent act of them, or the major part of them, to meet at a certain time and place. Where therefore such Assemblies are dissolved *sine die*, they are totally dissolved, however this dissolution happens; nor does any man owe them obedience any longer, but his or their title who next possesseth, is good enough against them and all others who cannot make a superior or more just claim. Nor can this have any reference to men born in Elective Monarchies; for, the Election depending upon the wills of men, viz. the Electors, (who originally had no right of Election) any Possession brought in against such Election by the will of man, is title equivalent to it; nor do Subjects in conscience owe obedience but to him who is possess, or can make a superior claim by a true descent from him against whom no just title can be taken.

Wherein consists the liberty of the Subject.

10. *Bodin* in his *Republique* makes a *Quere*, Whether it were better for Subjects to be governed by few Laws, with a reservation in the breast of the Judge, or some special Court, to redress extraordinary abuses, which cannot be comprehended in the Laws; or so to multiply Laws, that no man should be punished, where he could evade the Laws? And determines for the former; and the reason he gives, is, That Laws, be they never so many, are finite, but mens actions are infinite; and therefore though never so many Laws be made, yet may men find evasions out of them to abuse and wrong

wrong other men, whereby this multiplicity of Laws will rather ensnare other men, than avoid the end for which they were intended. It is a folly much incident to *Englishmen*, that they place not only Freedom in serving many Masters, but Liberty in many Laws. Let any man take a survey of the Statute-Laws and Ordinances made since *Henry* the Eighth his dissolution of Monasteries, to this year 1660. and see if they be not four times more than all the Acts made before, only to the liberty of the Lawyers Fees, for the ensnaring of the Subjects; it being no doubt the greatest liberty of the Subject to be governed by few Laws, and these the same in all places, if it were possible.

11. The power of Parents being from the law of nature, Childrens subjection to them is due from the law of nature, *Solon* having written the Athenian laws, being asked why he did decree no punishment upon him who should kill his Parent, answered, There was no man so detestable as to think to do such an act. He therefore did wisely not to make any law against that which was never heard of, lest by doing so, he should not so much forbid, as admonish Children to it. And what a curse did *Canaan* contract upon himself, for but discovering his Fathers nakedness? *Gen. 9. 25.* And no question, Gods blessings and curfings are never more efficaciously pronounced, than out of the mouths of Parents; And, *To honor thy father and mother*, is the first Precept to which there is a promise of reward annexed, *viz. That thy days may be long in the land, &c.*

Of subjection  
of children  
to parents.

12. Although the power of Masters over their Servants be created by positive humane laws; and therefore subjection of Servants to their Masters, is caused by humane laws: Yet does not this exclude the obedience and subjection which is due from Servants to their Masters by the law of nature, and Divine positive laws; but Divine laws do include the subjection due from Servants to their Masters, *in these* or general, and the laws of every Country, *ex hypothesi* or particular: As, *Thou shalt not steal*, is from the law of Nature; but that the doing of such a thing is Theft, depends upon the particular laws or usages of every Nation. And no question but Servants generally, when the Apostles wrote, were no other than Slaves, over whom their Masters had not only absolute dominion of whatsoever was theirs, but also power of life and death, and that by no consent or submission of theirs. And if such Servants ought to count their Masters worthy of all honor, how much more ought Servants to thank God, and willingly to serve and honor such Masters, who not only command over them not against their consents, but also command such things as they may easily perform?

Of servants to  
their masters.

1 Tim. 6. 1.

13. Although this subjection be last in expression, yet it is first in intention: For if this subjection or obedience had not been due, before any obedience to Temporal commands; how could the Primitive Christians have met in dens and caves, in daily Prayers, and Breaking of bread, whenas Temporal powers did not only not permit, but forbid it? Nor did God ever shew such terrible vengeance upon any disobedience and presumption, as he did upon *Corah*, *Dathan* and *Abiram*, *Num. 16.* and their Competitors, although their pretences were very fair (forsooth) *That all the multitude were holy, every one among them, and the Lord was among them, and Moses and Aaron did lift up themselves against the congregation of the Lord*; They, though none of the tribe of *Levi* nor separated persons, could offer sacrifice and burn incense to the Lord, as well as *Aaron* or any

Of subjection  
to Ecclesiasti-  
cal powers.



1 Tim. 6.  
3, 4, 5.

Diversity.

Priest. And no doubt but spiritual crimes are in their kind much worse and displeasing to God, than carnal, whatsoever offenders do pretend: And let us see what manner of men these pretended Reformers are which teach otherwise, and consent not to the wholesome words, even to the words of our Lord Jesus Christ, and to the doctrine which is according to godliness; *They are proud, knowing nothing, but doting about questions and strife of words, from whence cometh envy, strife, railings, evil surmisings, perverse disputings of men of corrupt minds and destitute of the truth, supposing that gain is godliness, from such withdraw thyself: O my soul, enter not into their secrets.*

14. In all Humane Society, or Society which is created by the law of Nature, viz. of Supreme Powers and Subjects, of Husband and Wife, of Parents and Children, the relations are indissoluble only by God, in those individual persons in whom the offices are; nor can they be aliened, transferred either by any act of themselves or any power else. All Society created by Humane laws, or Legal Society, is alienable not only by the act of God, and by the Laws which created it; for, *Unumquodque dissolvi potest eo ligamine quo ligatum est*: But also by the act of the Master and Servant; for, *Omnis consensus tollit errorem*. Christian Society does differ from either Humane or Legal; for though the cause of Christian power be by Divine positive institution, and therefore incommunicable or alienable; yet after it pleased God that Kings should be nursing fathers, and Queens nursing mothers to his Church, the exercise, endowment, privileges and immunities of Christian power is of positive humane institution. The obedience therefore or subjection due to them who have oversight over us in the Lord, is not formally due to such Bishops and Priests who have once had the oversight over us, but to such Bishops and Priests who are legally constituted to exercise the jurisdiction or function in such Dioceses or Parishes where they are so constituted; which exercise is alienable or transferrible, though not at the will of the Incumbent, yet at the will of Supreme powers, and legally at the will of the Donor.

## CHAP. II.

### Of Inheritance and Succession.

No Humane  
law can make  
a Royal heir.

I. **N**O humane law, can create a humane right; *Jura sanguinis nullo jure civili dirimi possint*: Nor is this right of succession from Divine positive laws, but observed as well where Gods revelation of himself is not received, as where it is. And if according to the resolution of all the most learned and reverend Judges in *Calvin's Case*, subjection is from no humane law, but from the law of nature, Then of necessity must Regal right and inheritance be from the law of nature; for no man supposeth subjection, where he does not presuppose power. The Will therefore of *Henry the Eighth*, where for want of issue of *Edward, Mary and Elizabeth*, he gives the English Monarchy to the issue of *Frances and Elleanor*, daughters of *Mary* his younger sister, before the right heirs of *Margaret* his eldest sister wife of *James the Fourth of Scotland*, was void and not to be allowed; and so was that of *Edward the Sixth*, who did disinherir his sisters *Mary and Elizabeth*,

Elizabeth, and gave the Crown to *Jane* daughter of *Frances* the French Queen aforesaid by *Charles Brandon* Duke of *Suffolk*; and so were the Acts of Parliament made by *H. 4. 5. and 6.* which entailed the Crown upon their Heirs; so was the Acts of the last of *Henry the 6.* which entailed the Crown upon him; and the heirs males of his body, and so were the Acts of the first of *Rich. 3. and H. 7.* which entailed the Crown upon them and their heirs. Neither is succession and inheritance of Crowns declared by any humane Law in the world that I know of, but only the pretended French *Salique* Law, which we shall examine afterwards.

2. None but God can make an Heire to a Crown; *solus Deus heredem facere potest, non homo. Co. Lit. Sect. 7.* And this Heire which *Sir E. Co.* here speaks of, is but heire in fee to Lands or Tenements, according to common Law or Customs; if then only God can make such an Heire, then sure none but God can make an Heire, which makes humane Laws, and permits Customs.

None but God can make an Heire to a Crown.

3. It is not only humane Laws, which say a bastard is *ifilius terra, & quasi nullius filius: Et qui ex damnato coitu nascuntur, inter liberos non computantur*: but God calls *Isaac Abrahams* only Son, although at the same time *Abraham* had his Son *Ismael* by *Hagar*, his Handmaid or Concubine. And *Abraham* gave all he had to *Isaac*, but to the Sonns of the Concubins which *Abraham* had, he gave gifts. *Gen. 25. 5, 6.* So though *Ismael* were *Isaacs* elder brother, yet in comparison of *Isaac* born in wedlock, God himself did not account him *Abrahams* Son. Nor can one instance be given, that ever by Gods either command or permission, any born out of marriage did inherit. By the Law therefore of God, aswell as humane Law, none can inherit which are born out of matrimony.

None can inherit, not born in Matrimony. *Gen. 22. 2.*

4. That which no humane Law prescribes, and yet is observed by all men generally in all ages, is from the Law of Nature; But no humane Law prescribes the male to inherit before the female in regality, yet it is observed by all men generally; therefore that the issue male shall inherit before the female in regality, is from the Law of Nature.

The Issue male shall inherit before the Issue female in Royalty.

5. If primogeniture had not been a sacred thing, and inheritance annexed to it by the Law of Nature, then could not *Esau* have been pronounced a prophane person for selling his birthright, *Heb. 12. 16.* although he did it to save his life, *Gen. 25. 34.* but being due by the Law of Nature, I say, *Esau* by his sale could not transfer it to *Jacob*; yet because *Esau* did despise it, *Gen. 25. 34.* it was just with God to transfer it to *Jacob*; neither can it be shewed any where in sacred writ, but that alwaies primogeniture in royal descent, was a good title where God did not interpose.

Of the Issue male, the first born is to be preferred.

6. Only the King can inherit and succeed, because his Royal capacity is affixed and inseparable with his person. In the Oath therefore of Ligeance, Subjects swear to beare faith to the King, his Heirs and Successors; but no Subject can both inherit and succeed, because there is no succession can be affixed to the person of any Subject, by vertue of inheritance. All Corporations therefore do not descend by inheritance, but are acquired, as they are nominated or elected in such manner as is granted by the King or supream power.

Why only the King is said to inherit and succeed, and Subjects do either inherit or succeed, but never both.

7. There are but two waies by which hereditary or successive Monarchies do descend; the one is Lineal descent, the other Lineal, Agnatical, Cognatical or Collateral; or as we say, the one descends to the heire general,

How many waies hereditary Monarchies descend



the other to the heire male. This latter by vertue of a Salique law takes place only in *France*; we will therefore see what may be said and objected against the former, and how the latter hath been observed in *France*; and of what Authority it is.

Gynococra-  
tia or inheri-  
tance of Wo-  
men not un-  
natural, nor  
against the  
Law of God.

8. That cannot be against the Law of God, which he has owned and given a blessed president of; but that God has owned *Gynacocra*ty, and that in a great and miraculous delivery of his own people, is evident in *Deborah*; And that Women may inherit, when the daughters of *Zelophehad* made their plea for their inheritance, *Numb*, 27. They first pleaded negatively, *Our Father was not of the company of them that gathered themselves against the Lord in the company of Corah* (which is a plain argument that rebellious Subjects have no property against supream powers, but forfeit their goods as well as lives, for God saies *ver*. 7. the daughters of *Zelophehad* spake right;) why should the name of our father be done away from his family because he has no Son? And God himself saies, *ver*. 8, 9, 10. If a man dye and have no Son, then shall the inheritance pass to the daughter, and if he have no daughter, then shall the inheritance go to his brethren, and if he have no brethren, then ye shall give the inheritance unto his fathers brethren, &c. And that inheriting by the daughter when there is no Son, in *Britain* (consonant to the Law of God) is as old as any record we can find; when *Voadicea* led the *Britans* against the *Romans*, it was alwaies a thing observed among them. *Neque enim sexum in imperiis discernunt: Tacit. Lip. in vita Agric. 457.*

Wherein Re-  
gality differs  
in descent  
from Estates  
by Civil Laws.

9. Although *Gynacocra*ty be neither against the divine Law of God or Nature; yet it is only to be understood, that in regality the female shall inherit when she is the eldest sister, and lineally descended from the Ancestor which has no Heir male of his body lawfully begotten. For in Regality *possessio fratris non facit sororem esse heredem*. But if a King or Queen by inheritance have issue by several venters or extractions, and by the latter a Son who does inherit, who dyes without issue; yet shall the Heir male descended from the Father, although but of half blood to him, inherit before his sister; and the elder sister descended from the Father, shall inherit before his sister although she be of whole blood to him, from the reason aforesaid, and therefore Queen *Mary* and *Eliz.* although but of half blood to *Ed.* the 6. did inherit before the Queen of *Scots*, or the issue of the Queen Dowager of *France* by the Duke of *Suffolk*, *Charles Brandon*, although they were of whole blood to him; and thus much does Sir *Ed. Coke* testifie.

Com. Lin. cap.  
1. Sect. 8. p. 15.  
First Charge.  
Bodins charge  
and incom-  
modities a-  
gainst Gyna-  
cocraty.

10 Before we examine the authority and observance of the *Salique* Law, let us see the heinous charge which Monsieur *Bodin* brings against *Gynacocra*ty, *cap. 5. lib. 6. pag. 738. de rep.* He says, *Gynacocra*ty is inimicitious to the laws of Nature, which gives prudence, strength, magnanimity of mind, force to command, to Men, takes them away from Women.

Answ.

A fine general charge, this! If I can form an argument out of it, this is it. All Government wherein prudence, strength, magnanimity &c. do not command, is inimicitious to the Laws of Nature: But in *Gynacocra*ty neither prudence &c. do command; Therefore *Gynacocra*ty is inimicitious to the Laws of Nature. Now the Major proposition requiring strength, prudence, and magnanimity in command, the Conclusion will be as strong against all Government, as *Gynacocra*ty; for he hath not defined what strength, prudence &c. is, nor who shall be Judge what it is; and so any man who will but deny that there is strength, prudence, &c. in the Governor,

nor, may by the Laws of Nature not obey, nay it is against the Laws of Nature to obey. But in what case are all Pupil Kings? Sure the man intended to make good *Pepins* and *Hugh Capets* Titles from this Proposition, against *Childerick* and *Charls* of *Lorrain*. But that which is most monstrous and impious, is, that it is inimicitious to the Laws of Nature for any Child to obey and honor his Mother, because she hath not prudence, magnanimity, and force of command.

*The Law of God not only took from Women the Government of Commonwealths, but also of Families, whenas he deservedly subjected them to the command of their Husbands.* The argument out of this is: Whom God hath subjected to the command of their Husbands, cannot by the Law of God command in Families: But God hath subjected Women to the command of their Husbands; Therefore by the Law of God Women cannot command in Families.

Second charge.

Yes, such Women as never were married nor subject to their Husbands, may, granting the Major proposition. But I deny the Major proposition; for sure it is no where against the Law of God, for a Widow to govern her Family.

Ans.

*As often as God testifies that he will take terrible vengeance against the enemies of his Name, he threatens them to be subject to commands and laws of Women;* (for this he cites *Isa. 8.* although I cannot find any such thing there) *as if that were the utmost of evils, and extremity of calamities.*

Third charge.

That this is false, is evident by Gods miraculous delivery of the children of *Israel* by the leading and command of *Deborah*. Besides, how can God command Women to command and give Laws, if it be against the Law of Nature? Which is all one to say, God does command against the Law of Nature, that is, his own Law.

Ans.

*The Roman Laws did seclude Women from all Civil offices, and Publique employments.*

Fourth charge.

But though the *Roman* Laws did forbid it, yet if the Laws of *France* did not allow it, how came *Blanch* the wife of *Lewis* the Eighth, *Katherine de Medici* wife of *Henry* the Second, and *Mary de Medici* wife of *Henry* the Fourth, and *Anne* the Mother of the present King, to manage the Regencie of *France*, as imperiously during the minority of their Spns, as if they had been absolute Princes?

Ans.

*That in Gynarchy the Wife is not subject, but superior to her Husband.*

Fifth charge.

So heavy bodies will, against their nature, ascend to supply a Vacuity.

Ans.

His sixth charge is an Invective against *Vasti*, *Joan* of *Naples*, called the Wolf, *Athaliah*, *Cleopatra*, *Zenobia*, *Hirene*, (As indeed, telling of stories is usually the greatest part of his reasoning; and that he will do so amply, that *Scaliger* justly reprehends him with making, not writing Histories.) Now if I should fall into the commendation of *Ruth*, *Hester*, *Judith*, *Deborah*, &c. I am quit with him. It is true indeed, that 'tis a great blessing to any Nation, that God gives them a Masculine Heir, endued with all those qualities he speaks of: But when God doth give a Child, (which he pronounceth a woe to that Nation, *Eccles. 10. 16.*) or a Female, Subjects must be content, and submit themselves to Gods pleasure: For in going about to alter what God hath done, they will make themselves in a much more woful condition; Nor could that be a judgment of God upon a Nation, to give

Sixth charge.

Ans.

Fools,



Fools, and Children, or Women for Heirs, if Subjects at pleasure might alter them and set up others in their stead.

The etymology of the Salique Law.

11. The *Salique* Law took its name either from the Country *Salia*, or the River *Sal*, or from contraction of *Si aliqua*, so often mentioned in the Law.

A short view of the authority and observance of the Salique Law.

12. There are three things observable in the *Salique* Law; the authority of it, the eternity of it, and the reason of it. For the authority of it, it was made by the Lord knows whom; for the eternity of it, it shall end the Lord knows when; and for the reason, *De terra vero Salica nulla portio hereditatis mulieri veniat, sed ad virilem sexum, tota terra hereditas perveniat. Bodin. de rep. p. 745.*

The authority of it by D<sup>r</sup>. *Avila*.

13. For the authority of it, the learned do not agree by whom it was made, nor whether any French King ever made any such, or not. *D'Avila* in the beginning of the first book of the Civil wars in *France*, recites the most probable conjecture, which is, That the *French* when they left their habitation to seek fresh quarters, sat down at the river *Sala*, (which divides *Misnia* Westward from *Turingia*) and there forsooth did agree to choose themselves a King, and did make Constitutions which should be fundamental and unalterable ever after; and those Constitutions being made at the river *Sala*, are called *Salique* Laws.

How probable.

14. There is no story of *Guy of Warwick*, *Amadis de Gaule*, or the *Dun Cowes rib*, but is of as much authority and probability as this. For, can it be imagined that a company of Rogues and Thieves, going to rob and thieve at *Gads-hill*, should agree at *Greenwich* to make unalterable Laws for their government and succession, before they were possessed of any thing? and what they make their Laws of, is nothing but what they shall rob and cheat other men of.

*Bodin's* opinion.

15. But *Bodin* will not undertake to tell by whom, or when it was made, (it is strange you will say, that making up his discourse almost of Histories, he hath nothing to say for this) he only saies it is not new as many men think, but engraven in the most ancient tables of the *Salians*, in these words, *De terra vero Salica &c. ut supra*: So *Bodin* names neither by whom, nor when, this *Salique* Law was made. Did ever man infer so fondly, that because the *Salian* women did not inherit, therefore the *French* Crown cannot descend to women? But mark now if this be a consequence: The women of the Land of *Salia* do not inherit, and therefore no female can inherit the *French* Monarchy: then if the men of the Land of *Salia*, will alter this constitution, the descent of the *French* Monarchy is altered by an Act of the men of *Salia*; for, *Cessante ratione legis, cessat lex*; and *sublata causa, tollitur effectus*. In their contest with the Popes, the Kings of *France* say, they hold their Crown of God; whereas if *Bodin* saies true, they hold it by a Law written in the Tables of the *Salians*. I can say no more for the authority of this Law, unless I should repeat the same things again, out of *De Serres* and other learned French Historians.

The eternity of it.

16. This Law cannot be altered by the King and Estates general. I had thought that only the Laws of Nature had been unalterable. It is a rule, that *Unumquodque dissolvi potest eo ligamine quo ligatum est*: And if this *Salique* Law be a constitution of Man, by that power which made it a constitution, by that power it may be altered.

The reason of it.

17. *De terra vero Salica nulla portio hereditatis mulieri veniat, sed ad virilem sexum*

*sexum tota terra hereditas perveniat*: Now let any man that is in his wits, or understands any thing of the nature of a Law, judge whether there be any shadow of reason in this; For, a Law is the rule or direction of him who does govern, to be observed by them who are governed. How then can the Crown of France descend according to the customs of the *Salians*, if the French Crown be not subject to the men of *Salia*, and they had given the King and his successors this unalterable Law of not descending to the female? but where this country *Salia* should be, I could never find so much as the name in any Geographer or Historian, ancient or modern. Sure the *Romans*, so curious in searching and describing of Countries would not have overseen it, especially the Emperor *Fulian*, warring so long in those parts of *Germany*, not above sixty years before they suppose *Pharamond* departs out of *Salia*, for to seek better quarters in *Gaule*.

18. The two main parts of the *Salique* Law are, That the Crown shall descend to the next heire male, and if the heire be an infant, that the next Prince of the blood who is a Major, shall during his minority be his Guardian, and Regent. Yet *Bodin* is fearful that the *Salique* Law was not bar enough against our *Ed. the third* (being never before heard of, saies *Hail n*) he saies, pag. 745. Whenas the controversie concerning the Crown of France, was between *Philip* Earl of *Valois* and *Ed. the third* King of England, *Philip* defended the *Salique* Law by the *Voconian*, which ordained by the consent of the *Fathes* and *Princes*, that in that controversie no man should use the authority of forrain Lawes, but every one should study for his profit, the *Salique* Law. But when the question was 1563, whether *Charles* the ninth were a Major at fourteen years of Age currant or complear, the Parliament of *Paris* would have taken upon them to decide it, when *Charles* sends them word, *I do not mean that you should deale in any thing, but with the administration of good and speedie justice to my Subjects; understand hereafter that you are not confirmed in your offices by me to be my Tutors or Protectors of my Realm, nor Governors of my City of Paris, as hitherto you have perswaded your selves.* Besides, *Charles* the seventh Anno 1420, was adjudged to banishment, and unworthy to succeed in any of the signories of France by all the Courts of the Parliament of *Paris*. And so about 7 years since was the Prince of *Condi*; and so was *Henry* the fourth by all the three Estates at the general assembly at *Blois*, Anno. 1588. So that it is evident that this immutable Law, is not so inviolably kept by the French themselves, when it does not serve their turn. How should the *Voconian* Law oblige against *Ed. the third*, and not the Acts of Parliament of *Paris*, and general Assembly at *Blois*, oblige against *Charles* the seventh, and *Henry* the fourth? for, *ubi eadem ratio, ibi idem est jus*.

The two main parts of the *Salique* Law.

19. There cannot be a more imprudent act, then to make any one Ward to him who is his next heire, especially to a Crown, which frees any one from all attainders; what then can be more imprudent then this part of the *Salique* Law, which gives the pupil King into the hands of the next heire; who murdering him, makes way for himself to the Kingship? By our Country Laws, no man could be Guardian to the person of a Ward, but the next of blood to whom the inheritance could not descend, But this part of the eternal Law has not of late been observed by the French Nation; whereas the contrary hath been, in the regencie of the Queen mothers, *Blanch*, the mother of *St. Lewis*, of *Francis* the second, *Charles* the ninth, *Lewis* the thirteenth, and *Lewis* the fourteenth.

The imprudence of the *Salique* Law.

20. Neither



It has been ill  
observed by  
the French.

20. Neither have the French better observed the other part of the *Salique Law*, for the descending of the Crown to the heirs male; for, *Pepin* having put King *Childerick* into a Monastery, had not any colour of title, but as he was chosen by the Parliament of *Paris*; so that it seems the Parliament of *Paris* may do what the King and general Assembly cannot, and alter the most fundamental constitutions of *France*, which forsooth at other times are immutable; and *Hugh Capet* to make his title good against *Charles of Lorrain*, the right Masculine heire of *Pepin*, did derive his pedigree from one of the daughters of *Charlemain* son of *Pepin*; Nor could *Lewis* the ninth (a most religious Prince) be resolved in conscience, till he was satisfied, that by his Grandmothers side he was descended from the right heirs of *Charles of Lorrain*. But I wonder with what face these Frenchmen can urge the *Salique Law* against others, and yet practise the contrary themselves; For *Charles* the eight having married *Anne* the Dutches of *Brittain* (and by that title possessed the Dutchy) by whom he had *Claude*, married to *Francis* the first, who had issue *Henry* the second, who had issue *Francis* the second, *Charles* the ninth, *Henry* the third and *Hercules*, *Elizabeth* married to *Philip* the second of *Spain*, and *Margaret* married to *Henry* the fourth. Now *Francis*, *Charles*, *Henry* and *Hercules* dying without issue legitimate, I would know how against the *Salique Law* *Charles* and his posterity should have a title to *Brittain*, and yet King *Philip* and his posterity be debarred of it by vertue of this pretended *Salique Law*.

### CHAP. III.

#### Of the Municipal Laws of England, before 1640.

Of Temporal  
Laws, and  
incidentally of  
the Municipal  
Laws of this  
Nation.

Common  
Law or Gene-  
rall usage.

Proem 8. part  
of Sir Ed.  
Cokes Reports

Preface 3.  
report. J

I. Temporal or Secular Laws are made to preserve men so long as they live in this world, in unity and peace one with another; and these do not bind in conscience only, but injoyn corporal and pecuniary mulcts for not observance, or transgressing them. The Municipal Laws of this Kingdom are either the Common Law, which are general usages of that long continuance, that they have quite lost their prime institution. That they were not brought in by the Conqueror, is most evident, for the Conqueror swore to observe the good approved and ancient Laws of this Kingdom; and that the Subjects might the better observe their duty, and the Conquerors Oath, he caused twelve the most discreet; and wise men in every shire throughout all England to be sworn before himself, that without swerving either *ad dextram*, or *ad sinistram*, they should declare the integrity of their Laws, without concealing, adding, or in any sort varying from the truth; and *Aldreb* the Archbishop that crowned him, and *Hugh* the Bishop of *London*, by the Kings commandement wrote that which the Jurats had delivered, and these by Publick Proclamation he declared to be authentick, and under grievous punishment to be inviolably observed.

And that 441 years before the incarnation of Christ, *Mulumutius*, of some called *Dunvallo M.* of some *Dovebant*, did write two Books of the Laws of the Britans, the one called *Statuta Municipalia*, and the other *Leges judicaria*,

*aria*, which is as much as to say, the Statute-Law, and Common-Law. And 356 years before our Saviour, *Mercia Proba* Queen, and wife of King *Gwintelin*, wrote a book of the Laws of *England* in the British tongue, calling it *Marchenleg*. King *Alfred*, or King *Alured*, King of the West-Saxons, 871 years after Christ, wrote a book of the Laws of *England*, calling the same, *Breviarum quoddam quod composuit ex diversis legibus Trojanorum, Græcorum, Britanorum, Saxonum, & Danorum*.

In the year after our Saviour 653. *Sigabert* or *Sigisbert*, *Orientalium Anglorum Rex*, wrote a book, calling it, *Legum instituta*. King *Edward* of that name the third before the Conquest, *ex immensa legum congerie, quas Britanni, Romani, Angli condiderunt, optima quaque selegit, ac in unam coegit quam vocari voluit Communem legem*. But whether these latter were the Laws which are now used in *England*, under correction may be question made, because the Authorities cited are from such obscure and uncertain Authors, that no great credit is to be given to them; nor are those Books (except *Alfreds* and *Edwards*, which are obsolete and out of use with us, and so have been these 600 years) any where to be found, whereby it may appear that they have any affinity with the Common-Law. But it does most certainly appear out of most authentical Records, that time out of mind, before the Conquest, there had been Sheriffs, for the Writ of *Assise*, and every other Original Writ, to whom they were directed, except to the Coroner in special cases, who stands in place of the Sheriff; and for Trials by the Oath of Twelve men; and that the Writs of *Assise* and other Original Writs were returnable into the Kings Courts, and that there had been a Court of Chancery for all Original Writs to issue out and none other; and that those Mannors that were in the hands of *S. Edward the Confessor*, are to this day called Ancient *Demesne*. All which does more copiously and fully appear in this Proeme to the Third Part of the *Reports*. And that the Chancery, Kings Bench, Common Pleas, the Exchequer, be all the Kings Courts, and have been time out of memory of man, so as no man knows which of them is antientest. Proem, Rep. 8.

Afterward in the Proeme to the Ninth Part of his *Reports*, out of the *Mirror of Justices*, which treats how the Land was governed almost twelve hundred years since, having spoken of the Courts of Parliament, Chancery, Kings Bench, Common Pleas, and the Exchequer, he descends to the *Justiciarii Itinerantes*, or Justices in Eire: "The Kings do right to all men by their Justices, Commissioners itinerant, assigned to have Conusance of all Pleas. In aid of such Eires, the Sheriffs Turns and View of Frankpledges are necessary, &c." Justices Itinerant, sec. 6.

Then he treateth of the Sheriffs Turn; "That the Sheriffs, of antient Ordinance, do hold general Assemblies twice a year in every Hundred; whither all the Freeholders within the Hundred are bound to come by the service of their Feifs (or Fees) that is to say, once after Michaelmas, and another time after Easter, &c." Sheriffs Turns, sec. 7.

"Leets or Courts of View of Frankpledge, are Assemblies ordained once a year, not only of Freeholders, but of all in the Hundred, as well Denizens as others (except Archbishops, Bishops, Abbots, Priors, and all Religious people and Clerks, Earls, Barons, Knights, Married women, Persons dumb and deaf, diseased, Bastards and Lepers; and those that are Deciners elsewhere) to enquire of the offences personal, and of all the Leets or views of Frankpledge, sec. 8.



“circumstances, of offences done in those Hundreds, of the wrong done  
 “by the Kings or Queens ministers, and of the wrong done to the King  
 “and the Commonalty. But this ought not to be done by Bondmen or  
 “Women, but by the Oath of Twelve Freemen.

County-court  
 sec. 9.

“The County-Court : which the Sheriffs hold from moneth to moneth,  
 “or from five weeks to five weeks, according to the greatness or largeness  
 “of the County.

Court-Baron,  
 &c. sec. 10.  
 Pipowders,  
 sec. 11.

“Of Court-Barons and Hundred Courts.

“The other mean Courts, are the Courts of every Lord of the Fee, &c.

“Courts of Pipowders. And that from day to day speedy Justice be  
 “done to Strangers in Fairs and Markets, as of Pipowders, according to  
 “the Law of Merchants.

Admiralty,  
 sec. 12.

“Court of Admiralty. The King hath sovereign jurisdiction upon  
 “the Sea.

Courts-Forrest  
 sec. 13.

“Courts of the Forrest. The Kings Ministers of his Forrests have  
 “power by authority of their office to swear men, without the Kings Writ,  
 “for safeguard of the peace, and the Kings right, and the common good, &c.  
 “He treats of the Professors of the Law, as Counters, who are Serjeants  
 “and Pleaders. Of Attornies, Of Ministers of Justice, as Viscounts, Coro-  
 “ners, Escheators, Bailiffs of Hundreds, &c. And also by the ancient Kings,  
 “Coroners were ordained in every County, and Sheriffs to keep the Peace  
 “when the Earls were absent from their charges, and Bailiffs in lieu of the  
 “Hundredors, &c.

“Of the Prerogatives of the King ; as of Deodands, Alienation to  
 “Aliens, Teeasure found, Wreck, Waif, Estray, Chattels of Felons and  
 “Fugitives, Honors, Hundreds, Soakes, Gaols, Forrests, chief Cities,  
 “chief Ports of the Sea, great Manors. These held the first Kings as their  
 “right, and of the residue of the Land did enfeof the Earls, Barons, Knights,  
 “Serjeants and others, to hold of the King by Services, provided and or-  
 “dained for defence of the Realm. It was ordained, that the Knights Fee  
 “should come to the eldest by succession of heritage ; and that Socage Fee  
 “should be partable between the Male-children, and that the Liege-Lords  
 “should have the Marriage.

He treateth in the *first Chapter*, of Crimes, and their divisions ; of  
 the crime of Majesty, of Faulsonnery, of Treason, of Burning, of Homicide,  
 of Felony, of Burglary, of Rape, &c. In the *second*, of Actions, of  
 Judges, of Attors, &c. In the *third*, of Exceptions dilatory and peremptory,  
 that is, Pleas to the Writ, and in Bar, &c. of Trial by Juries and by Battel,  
 of Attaints, of Challenges, of Fines, &c. In the *fourth*, of Judgments, and  
 therein of Jurisdiction, of Process in criminal causes, and in Actions real,  
 personal, and mixt. So as in this Mirror you may perfectly and truly discern  
 the whole Body of the Common Laws of England. Thus far Sir  
 Edward Coke.

Mr. Lambert, in his unfolding the difficult things and words in his translation  
 of the Saxon Laws, says, King Alured when he had made a League  
 with Guthrum the Dane, having followed the most prudent counsel given  
 by Sethro to Moses, first divided England in *Satrapias, Centurias, & Decurias*.  
 He called *Satrapiam* Scype, a reynan, which signifies to divide ; He called  
*Centuriam* Hunnereb, and *Decuriam* teopung or tienmantale, that is, a  
 company of Ten men ; and by those names they are called to this day.  
 And

And that no man might be ignorant, the *Decuria* did consist of Ten men, whereof all of them were pledges that every one should be forth-coming to any Action in Law; and if any one did any damage, the other were bound to make it good; and from hence the other nine were called *freoborh*, that is, Free-pledges: we in the Pleas of Courts call them *Francos plegios*. The tenth man *teobunzmon* called the *Decurio* or Tithingman, by which name he is most known to the Eastern English, at this day: Others call him *tenheorod*; others call him *freoborherhod*, that is, the first or chief Surety or Pledge: The *Kentish-men* call him *Borholder* corruptly for *boreheorod*, that is, the first Surety. *Centuria*, or a Hundred, was made up of ten *Decuria's*, as one Hundred is made up of ten times ten. This (*viz.* Hundred) the men beyond *Trent* called by another name, not unknown to the common people, *wapentac* Wapentac. *Alured* then further ordained, That every man of free condition should be enrolled in some Hundred, and be conjoined into some Ten-men company: That of lesser businesses, the *Decurions* or Court-Leet might judge; and if any weightier matter were, it should be deferred to the Hundred or County-Court. Lastly, that the Alderman and Sheriff (I take it, he calls them *Senator & Prapostus*) should compound the most difficult Suits and of greatest moment, in that frequent Convention from all parts of the Shire or County. And what the manner of judging was, King *Etheldred* in the fourth Chapter of his Laws (which he enacted in a full Senate or Parliament at *Vanatnigum* *puperdoc* Woodstock) expounds almost in these very words: "In all and every Hundred let there be Assemblies, and that "Twelve elderly men of free condition, together with the Sheriff (*Praposto*) be sworne, that they will not condemn the Innocent; or absolve "the Guilty.

So that Mr. *Lambert* seems to be of opinion, that the Common-Law had its origination from King *Alured* or *Alfred*, who was King of all *England*, and a most victorious, pious, prudent, and glorious Monarch; about the year of our Lord 890. And from a most deplorable condition, by reason of the Danish invasion and robbery, reduced it to a most quiet calm, and laid that foundation, upon which the body of the Common-Law is since builded. But whosoever was the first Founder and Establisher of them, certain it is they were antient, and Laws which better suit to the nature and disposition of *English-men*, then any other that are, or ever were in the world, would do.

2. As those general Usages or Customs which are generally observed, are called the Common-Law; so there are almost infinite particular Usages, Prescriptions and Customs in several parts of this Nation, which are observed as Laws by the Inhabitants of those places, and to all intents and purposes have the effect of Laws. Particular Usages.

3. Statute-Laws are Acts of Parliament; which are neither general nor particular Customs, but are Laws made by the Kings of this Land in Parliament, upon sundry and diverse occasions, according to the then occasions, as they represented themselves. For although all innovations are dangerous; and therefore if it were possible, no doubt it were best that humane Laws (as the Laws of Nature) might be immutable and eternal; but as God hath created all things transitory, and nothing in this world the same the next subsequent minute, that it was before; and therefore the state of



Humane affairs being every day variable, and putting on a new face to morrow, which they had not neither to day, nor yesterday ; which cannot be certainly foreseen by any man, or men, no more then any Master of a Ship can foresee what winds will blow to morrow, or next day ; or whether it will be serene, or stormy weather, whether deep or Rocky Seas. Yet if no prudent Mariner will venture himself, and those under his command to Sea, without sufficient provision against all the contingencies which may happen, and be prevented ; Then sure no man or men not vainly blinded with ambition, will undertake to manage the Government of a Nation without sufficient means to protect themselves and Subjects from all future storms and confusions, which may either arise from within the Nation, or be caused from without. Yet will it not follow that every day there should be new Laws made, for *Nihil semel perfectum & inventum*, there is nothing which is perfect so soon as begun ; and many mischiefs and inconveniencies may be begun, and yet be prevented before they can be brought to perfection. But then it must be presupposed that there may be remedies used, which must of necessity be, that there be a present and coercive power in being, which may suppress, and dissolve those mischiefs and inconveniencies, by making new Laws, if the old ones will not remedy them ; and this is no new thing, but is, and alwaies was, in all governments that ever were, whether Monarchy, Aristocracy, or Democracy.

Of what  
parts a Par-  
liament is  
compounded.  
*Inst. 4. pag. 1.*

A Parliament is a Politick body compounded of Heterogenial or dissimilar parts, viz. the King, the Lords spiritual and temporal, in one distinct house, and of a house of Commons another distinct house.

What creates  
the Lords  
house.

Since there has been so much contest about the power and jurisdiction and cause of Parliament ; and since it being compounded of unlike parts, and some of these unlike parts, nay pieces of those parts have assumed the name of Parliament, We will examine all the parts of it, and see whether it be not all made and created by the King, and into him only can be ultimately resolved, he being *principium, caput, & finis* of it.

*Inst. 4. par. 1.*

*Com. Lit. Scil.*  
*648. pag. 344.*

*Inst. 4. par. 1. 4.*

First, For the Lords spiritual they are all parts of the Lords house, and sit there by succession in respect of their Countles or Baronies, parcell of their Bishopricks ; but all Bishopricks were originally of the Kings foundation and donative *per traditionem baculi* (viz. the crozier) & *annuli* (viz. the ring) whereby he was married to the Church. King Henry the first being requested by the Bishop of Rome to make them Eligible, refused it ; but King John by his Charter bearing date 5 *Idus, an. 17.* granted that the Bishopricks should be Eligible ; so that the foundation, donation, and election to Bishopricks was only and immediately caused by the King : and in this capacity by virtue of the Kings Writ out of the Court of Chancery, does every Bishop sit as a member of the upper house of Parliament. So that the Lords spiritual did immediately hold their Bishopricks of the King ; and were members of the upper house only by virtue of the Kings Writ.

Secondly, That the Lords Temporal are created immediately by the King, is so manifest that I think no man will question it, and that every Temporal Lord is impowred to sit as a Member of the Lords house by virtue of the Kings Writ issuable *ex debito justitie*, out of the Chancery. See *Inst. 4. part. pag. 1. & 4.*

All

All the Judges of the Realm, Barons of the Exchequers, of the Coif, the Kings learned Council, and the *Civilians* Masters of the Chancery, all called to give their assistance and attendance in the Upper house of Parliament, but have no voices in Parliament. How their Writs differ from the Barons, see *Inst. 4. part, page 4.*

Temporal Assistants of the Lords house.

In every Writ of Summons to the Bishops, there is a clause requiring them to summon these persons to appear personally at the Parliament, which is in these words: *Premonientes Decanum & Capitulum Ecclesia vestra Norwicensis, ac Archidiaconos totumque Clerum vestra Diocef. quod iidem Decani & Archidiaconi in propriis personis suis, ad dictum Capitulum per unum, idemque Clerus per duos Procuratores idoneos plenam & sufficientem potestatem ab ipsis Capitulo & Clero divisim habentes pradiet. die & loco personaliter interfint ad consciendum hiis quae tunc ibidem de communi Concilio dicti Regni nostri, Divina favente clementia, contigerit ordinari.* So that not only the Lords Spiritual and Temporal, but their Assistants, are only created by the Kings Writ, or immediately by the Kings authority.

Spiritual Assistants, or Procuratores Cleri.

But since there is so much contest about the House of Commons, and men say they represent the Freeborn people of this Nation, and are the Supreme Authority of the Nation: We will therefore enquire into the cause, and see what may be the Freeborn people; and whether a House of Commons, as it now stands, can be their Representative; and whether being their Representative, they may be the Supreme Authority of this Nation?

The House of Commons are not the Representatives of the Free people of the Nation.

First, What are the People? If any man had said the people of *Rome*, or the people of *Athens*, or the people of *Carthage*, &c. a man had understood them, and only them of *Rome*, *Athens*, or *Carthage*, &c. who were *civitate donati*. But in *England* the case is much otherwise; for with us there is no *civitate donatus* in one more then another; but all men are alike born free, and so by consequence every man as a freeborn man of *England* has as much right to his freedom one man as another: I say therefore, if every man of *England* has not a like vote and power in electing Members for the House of Commons, then cannot the House of Commons be the Representative of the Nation; for, *Plus valet contemptus unius, quam consensus omnium*. But it is most manifestly evident, that the House of Commons are not elected by the equal consent of the freeborn people of *England*, (for not only two parts of three have not Forty shillings a year, yet are as freeborn as they who have, and as liable to penalty for transgressing Laws made in Parliament, as they who do elect; but many men have double votes in the election, in Corporations where they send Burgesses, and yet have like power with the Forty-shillings-men in electing a Knight of the Shire; and such a place as *Rising-Chase* and *Old Sarum*, &c. have a like power in this House with the County of *Tork*; and the Bishoprick of *Durham* sends none at all: So that it may be rather termed a Representative of the Free Corporations, then a Representative of the Freeborn people of *England*.) The House of Commons therefore cannot be a Representative of the Freeborn people of *England*.

But suppose them the Representatives of the Freeborn people of this Nation, yet cannot they be the Supreme Authority of it; for no power can act beyond the power of its being. I say therefore, that no Representative can be supreme, or superior to the cause of its being: The House of Commons

Nor the Supreme Authority of the Nation.



Commons therefore cannot be (granting it the Representative of the Freeborn people of this Nation) the Supreme Authority of the Nation.

But if the house of Commons be not sent by the people and their Representatives; Who creates them, and by what right do they make a house of Commons?

Of what sorts  
of men the  
house of  
Commons is  
compounded.

Before we answer this *Quære*, we will see of what sorts of men a house of Commons is compounded. A house of Commons is compounded of three sorts of men, *viz.* Knights of Counties, Citizens sent by Cities, and Burgesses of Corporations: Barons of the Cinque Ports are the same thing differently expressed with Burgesses of Corporations. Now that all Cities, Burroughs, Corporations, and Cinque Ports, are not so *jure naturali*, nor by any inherent birthright, but from their Charter, which is nothing else but the Kings grant, is so manifest, that I think no man in his wits will deny. But all Cities and Corporations are not alike in privileges, but more or less as they are impowred by their Charter or Grant of the King. Some Corporations have Liberties & Priviledges, and are impowred to send Burgesses; others have Liberties and Priviledges, but not qualified to send Burgesses; nay some Cities have Liberties and Priviledges, but not endewed with this right of having Representative in the house of Commons, as the Cities of *Durham* and *Ely*.

What creates  
the house of  
Commons.

And as neither Cities nor Burroughs are endewed with these their Liberties and Priviledges by any inherent birthright; so neither are the Counties nor Inhabitants endewed with any right of sending Knights of their Counties by any inherent birthright; for then had all the Counties a like right one as another, and all the Inhabitants a like vote; and they might create representatives as often as they should see occasion. But all these are most evidently false; for we have shewed before, that not only the division of this Nation into Counties was an act of the Kings, but all Counties are not alike endewed with this Priviledge, some Counties in *Wales* sending but one, and the County of *Durham* none at all. Nor have all men a like vote in electing (and yet as much subject to Laws made in Parliament as other men) but men only who have 40 *s.* yearly freehold rent; nor can these 40 *s.* a year men, when they will, send their representatives. What then does impower these to send representatives? Why let *Sir Ed. Coke* say, Knights of Shires, Citizens of Cities, and Burgesses of Burroughs, are respectively elected by the Counties, Cities and Burroughs, by force of the Kings Writ. So that the Kings Writ is the first and efficient cause of the house of Commons, as well of the Knights, as Citizens and Burgesses; the Commons cannot begin nor be dissolved, without the King in person or representation.

*Inst. 4. p. 1.*

*pag. 28.*

*Annot.*

If then Rebellion be as the sin of Witchcraft, as the Holy Ghost saies; and if *crimen lesa Majestatis* be the highest crime and impiety, as all Lawyers hold; and if Gratitude be one the chief of all Moral virtues, as all men hold, for, *si ingratum dixeris, omnia dixeris*, no man who is an ingrateful man, but has rendred himself as if he had committed all manner of wickedness: How impious then is it for men, only from the Kings grace endewed with this high favor; to convert it in opposition and derogation of that power and person from whence they originally received it! But they say, if the Commons did it, then was it done by the people, and so just and not to be questioned,

as if the people were not a thing to be governed ; and all as much subject to the King and Laws as every one ; or that a thing just or unjust in it self, were more just or unjust, because more or fewer did it. Will any man say, the crucifying of our Saviour was therefore just, because many of the *Jews* did it ? or that a rout or riot is therefore lawful, because done by many men ? or that it is not parricide or regicide, if many Sons and Subjects kill their Parents, and King ?

As all the Members of both houses are created by the King, so cannot these Members be formed into a body but by the King, either by his Royal presence or representation. By representation two waies ; either by a Guardian of *England* by Letters Patents under the great Seal, when the King is *in remotis* out of the Realm : or by Commission under the great Seal of *England* to certain Lords of Parliament representing the person of the King, he being within the Realm, in respect of some infirmity.

The Parliament cannot begin but by the King.

*Inst. 4. p. 6.*

This House is so far from being the Supreme Authority of the Nation, that they are not a Court of Judicature, nor can impose an Oath, or take any mans Examination. Yet Sir *Ed. Coke* says, *Inst. 4. 28.* that the House of Commons is to many purposes a distinct Court, because (he says) they cannot be prorogued or adjourned but by its self ; yet gives no more. It is true indeed, that to many purposes among themselves they do judge their Members, and Elections, and have a Committee for Religion ; but these things are more of custom (whether good or bad, I cannot tell) then of any original right that I know, or ever heard of. And Sir *Ed. Coke*, *Inst. 4. 11.* says, They being the general Inquisitors of the Realm, have principal care in the beginning of Parliaments to appoint Committees of Grievances (both in Church and Commonwealth) of Courts of Justice, of Priviledges, and of Advancement of Trade. They have been wont too, ever since the Statute *de Tallagio non concedendo*, of course to grant the King Aids in extraordinary cases.

The Jurisdiction of the Commons House.

The House of Peers, assisted as aforesaid, are the Supreme Court of Judicature in this Nation ; not only to judge whether matters presented to them by the Commons, be fit or requisite for the King to pass into Laws, (as Monsieur *Bodin* well observes, who disputes this better then any of our English Lawyers that I know of, has done) but also of Writs of Error, and of matters of Fact either not determinable in other Courts, or else when though they are determinable in other Courts, yet in regard of nicety or special matter they cannot well discern or judge.

The Jurisdiction of the House of Lords.

I have therefore been particular herein, as well to shew into what cause not only both Houses conjunctly, but every particular Member in either, have a right of being ; as also (since *Non datur progressus ad infinitum*) the Parliament being a body compounded of heterogenial or dissimilar parts, if they sever or divide, into what Subjects may, ultimately with good conscience, resolve their faith and obedience. And no question, it is better any thing should be Law, then that every thing should be lawful : And that is the greatest slavery, where Subjects know not where to pay their obedience, and from whence to expect protection ; but where different Factions shall with equal right or injury, impose their lusts and wills for Laws to their Fellow-subjects.

*Annot.*

The Jurisdiction of Parliament is so transcendent, that it maketh, inlargeth, diminisheth, abrogateth, repealeth and reviveth Laws, Statutes, Acts

The Jurisdiction of Parliament; Acts



Acts and Ordinances, concerning matters Ecclesiastical, Capital, Criminal, Common, Civil, Martial, Maritime, and the rest: It may make Daughters and Heirs apparent of a man or woman, during the life of the Ancestor; adjudge an Infant or Minor of full age; attain a man of Treason after his death; it may Bastard a Child that is Legitimate, it may make a Bastard Legitimate.

By what other names called.

Inst. par. I. 110. a.

Objct.

A Parliament was called before the Conquest, *Michael Sinoth, Michael Gemote, Ealsa Witenage Mote*; that is to say, the Great Court or Meeting of the King and of the Wise men; sometime, of the King with the Council of his Bishops, Nobles, and wisest of his people. The French call it *Las estates*, and *L'assemble des estates*; (the Parliaments in France are no other then our Courts of Kings-Bench, Common-Pleas, Exchequer, and Chancery in England.) The Germans call it a *Dyet*. And Inst. 4. p. 2. it was antiently called *Witenage mote, Conventus sapientum, Commune concilium regni, Generale concilium regni, Concilium regni, & Assisa generalis*. Tully calls it, *Confessum Senatorum, a confidendo, &c.*

But it may be it will be objected, That though the King be *principium, caput, & finis Parliamenti*, and that every Member, as well as both Houses, have their original right and sitting there from him; and that though Laws of right ought to pass in Parliament at the rogation, request or petition of the Commons, by the counsel and advice of the Lords; yet the Kings of the Nation have long since divested themselves of this power, and have granted the Lords and Commons a concurring power in the making of Laws, or by custom and usage it hath been so time out of mind, and so ought to be observed as a Law.

Ans. 1.

To the first I say, Kings reign by a higher then any humane law; and therefore no act of any King can divest himself or successor of any attribute due to him or his successor: And if Kings actions did oblige themselves or successors, then were this Crown not free, but subject to the Pope, because King John made it so. But I deny the assertion; for it is false, that ever any King of this Realm did ever grant the Parliament, or either House, a concurring power of making Laws with him.

Ans. 2.

For the second; No usage, prescription, or custom can take place, where there are records or proofs to the contrary. Whether we cannot give proofs enough to the contrary, judge good Reader.

Inst. 4 par. 3. Ibid.

David's calling all the Lords of Israel, the Lords of the Tribes, the Lords of the Companies that ministred to the King by course, the Captains over thousands and over hundreds, and the Lords that had the oversight over all the substance and possession of David and of his sons, with the Chamberlains, and all the mighty, and all the valiant, and all the active men, unto Jerusalem, to consult concerning the building of God a house, 1 Chron. 28. 1, 2. was a Parliament. So was that Convention of Solomon's, 2 Chron. 2. and that Convention of the Israelites, Judg. 20. 11.

Proem. par. 9. Reports.

*Ego Inas Dei gratia Westsaxonum rex, exhortatione & doctrina Cenredes patris mei, & Heddes episcopi mei, & Erkenwaldes episcopi mei, & omnium Aldremannorum meorum, & Seniorum sapientum regni mei, multaque congregatione servorum Dei, sollicitus de salute animarum nostrarum, & statu regni mei, constitui rectum conjugium, & recta judicia, pro stabilitate & confirmatione populi mei, benigna sedulitate celebrari, & nullo Aldremanno vel alicui de toto regimine nostro conscripta liceat abolere judicia; was an Act of Parliament.*

Hoc

Edwardus rex admonuit omnes sapientes suos qui fuerint Exonia, ut investigarent simul, & quarent quomodo pax eorum melior esse possit quam ante fuit; was an Act of Parliament by Edward King Alfreds son.

Ibidem.

Hac sunt instituta quæ Edgarus rex consilio sapientum suorum instituit; were Acts of Parliament.

Ibidem.

Hoc est consilium quod Etheldredus rex, & omnes sapientes sui condixere ad emendationem pacis omni populo, apud Woodstock. Hac sunt verba pacis, & prolocutionis quæ Etheldredus rex, & omnes sapientes ejus cum exercitu firmaverunt, qui cum Anulano, Fustino, & Guemundo Stigrani filio venit: Et hac instituerunt Etheldredus rex, & Sapientes ejus apud Habam; were Acts of Parliament.

Ibidem.

Edmundus rex congregavit magnam Synodum Divini ordinis & Seculi apud Londonum civitatem in Sancto Pasch. solenni: & ha sunt institutiones quas Ed. rex, & episcopi sui, cum sapientibus suis instituerunt apud Culinconam, &c. & paulo post: Ego Edmundus rex mando & precipio omni populo senior, & junior, qui in regione mea sunt, qui investigans investigari, cum sapientibus Clericis & Laicis; were Acts of Parliament.

Ibidem.

Hac sunt statuta Canuti regis Anglorum, Danorum, Norvegar' venerando sapientum ejus consilio ad laudem & gloriam Dei, & sui regalitatem & commune commodum habita in Sancto Natali Domini apud Wintoniam, &c. were Acts passed in Parliament.

Ibidem.

Rex Canutus an. regni sui 5. per 130 annos ante copilationem decretorum qua an. Dom. 1150. fuer' copilat' anno 7 pontificatus Papa Eugeni tertii, & ante copilation' aliorum Canon' quorumcunque, cunctos reg' sui pralat' procuresque ac magnates ad suum convocans Parliam' in suo publico Parliam' persistentibus personaliter in eodem Wulstano, & Adelnodo archiepisc' & Ailwino episc' Elmehamense, & aliis episcopis ipsorum suffragan' septem Ducibus, cum tot Comitibus, nec non diversorum monaster' nonnullis Abbatibus, cum quamplurimis gregariis milit' ac cum populi multitudine copiosa, ac omnibus adhuc in eodem Parlamento personalit' existent' votis Regis unanimiter consentientibus, præceptum & decret' fuit, quod Monasterium Sancti Edmundi &c. sit ab omni jurisdictione episcoporum illius ex tunc imperpet' funditus liberum & exemptum, &c. Illustris rex Hardicanutus pred' regis Canuti filius, hæres & success' ac sui patris vestigior' devotus imitator, &c. cum laude & favore Agelnod' Dorobornensis, nunc Cantuariensis, & Alfrici Eborac' episcoporum, aliorumque episcoporum suffragan', nec non cunctorum regni mei mandanorum principum descriptum constituit roboravitque præceptum; were Acts of Parliament.

Ibidem.

Rex Eldredus convocavit Magnatos, Episcopos, Proceres, & Optimates ad tractandum de publicis negotiis regni: And this was a Parliament.

Inst. 4. p. 3.

But none of these (you will say) have the obligation of Laws upon us. Well, let us see those Acts of Parliament which have, and what is the difference. By the way, no Acts of Parliament are now, nor these 400 years have had the force of Statute-Laws in England, but those made in Henry the Third's time, and since. And what was the first and great Act of Magna charta, but—Henry by the grace of God King of England, Lord of Ireland, &c. We have granted to God, and by this our present Charter have confirmed for us and our heirs for ever, That the Church of England shall be free, and shall have all her whole rights and liberties inviolable. We have granted also and given to all the Freemen of our Realm, for us and our heirs for ever, those Liberties underwritten, to have and to hold to them and their heirs, of us and

Magna Charta  
an Act of Par-  
liament.



Nota bene.

*our heirs for ever.* Note, this great Charter which made the Church and Kingdom of England the most free in the world, was a free and voluntary act of an English Monarch in Parliament: And all that violation and destruction of all those happy Grants and Concessions both in Church and State, have been made by a cursed conspiracie of a factious and seditious company of men (falsly and most injuriously arrogating to themselves the name of Parliament) without and against the Kings good mind and pleasure.

*Charta Foresta* was — Henry by the grace of God King of England, Lord of Ireland, Duke of Normandy and of Guyen, &c. We will that all Forests which King Henry our Grandfather afforested, shall be viewed by good and lawful men, &c.

*Statutum Hibernia* was nothing else but — Henry by the grace of God King of England, &c. To his trusty and welbeloved Gerard son of Maurice, Justicer of Ireland, greeting. Commanding him to cause the Customs recited in the Act, and used in England, to be proclaimed, and streightly kept and observed in Ireland.

An. 21. H. 3.

An. 51. H. 3.

*Statutum de Anno Bissextili* was — The King unto the Justices of the Bench greeting, &c. The Statute intituled *Assisa panis & cervisie*, was — The King to all to whom these presents shall come, greeting. We have seen certain Ordinances, &c.

An. 51. H. 3.

*Stat. de Scaccario*: The King commandeth that all manner of Bailiffs, Sheriffs and other Officers, as well Justices of Chester, &c.

An. 52. H. 3.

Statutes made in the Parliament at Marleborough; wherein the King made these Acts, Ordinances and Statutes underwritten, which he willeth to be observed for ever firmly and inviolably of all his Subjects, as well high as low.

An. 3. Ed. 1.

Statute of Westminster the first, were the Acts of Edward the son of Henry, &c. by his Council, and the assent of Archbishops, Bishops, Abbots, Priors, Earls, Barons, and all the Commonalty of the Realm, &c. the King ordained and established these Acts underwritten, which he intendeth to be necessary and profitable unto the whole Realm. First the King willeth and commandeth that the peace of Holy Church, and of the Land be well kept and maintained in all points, and that common right be done to all as well poor as rich, without respect of persons, &c.

An. 6. Ed. 1.

Statutes made at Gloucester, where our Sovereign Lord the King for the amendment of the Land, and for the relief of his people, &c. hath provided and established these Laws underwritten, willing and commanding that from henceforth they be firmly observed within the Realm.

An. 10. Ed. 1.

Statute of Rutland, hath no other title then — The King to his Treasurer and Barons of the Exchequer, and to his Chamberlains greeting, &c.

An. 20. Ed. 1.

*Articuli super Chartas*, were Grants in Parliament made by the King at the request of the Prelates, Earls and Barons assembled in Parliament. Note, the Commons are not so much as named in these Acts of Parliament.

An. 30. Ed. 1.

An. 33. Ed. 1.

The Statute of *Quo Warranto* made at Gloucester, and Statute de *Protectionibus* made at Westminster, the King only speaks.

An. 34. Ed. 1.

*Stat. de conjunctione Feoffatis*: The King unto all to whom these, &c. greeting. And after the recital of the things contained in the Act, it is said, In witness of which thing we have caused these our Letters Patents, I my self being Witness at Westminster.

Statute

Statute of Amortising of Land, made by *Ed. 1.* only the King speaketh. *Ordinatio pro statu Hibernie*, made 17 *Ed. 1.* the King speaketh by the assent of his Council.

Statute *Ne Rector prosternat arbores in cimiterio*, only the King speaketh, *An. 35 Ed. 1.* and neither Council nor Parliament mentioned.

Statute for *Knights*, hath no other title then---*Our Lord the King hath granted, &c.* And *Stat. de frangentibus prisonam*, 1 *Ed. 2.* hath nothing to create it a Law, but, *The King willet and commandeth*; and neither Parliament nor Council named in either of them.

*Articuli Cleri* made at *Lincoln*, the King and his Council are named. *An. 9. Ed. 2.*

The Statute of *York* was made by the King, by the assent of the Prelates, Earls, Barons, and Commonalty there assembled: So that in these three Kings reign, although the King did enact them in Parliament, yet the manner was different almost in all. *An. 12. Ed. 2.*

In *Ed. 3.* his time, was the form of enacting Laws truly defined, and much used by him and the subsequent Kings. At the Parliament holden at *Westminster*; "King Edward at the request of the Commonalty, and by their Petition made before him and his Council in the Parliament, and by the assent of the Prelates, Earls, Barons, and other great men assembled at that Parliament, hath granted &c." *An. 1. Ed. 3.*

In the next Parliament holden at *Northampton*, the Laws are made by him, and by the assent of the Prelates, Earls, Barons, and other great men, and all the Commonalty assembled in Parliament. *An. 2. Ed. 3.*

Statutes made at *Westminster*, were enacted by the King, his Prelates, Earls, Barons, and other of the same Parliament, at the request of the Commons. *An. 4. Ed. 3.*

Statutes made at *Westminster*: The King by the assent of the Prelates, Earls, Barons, and other great men of the Realm, at the request of his people granted, and established &c. *An. 5. Ed. 3.*

Statutes made at *York*, were enacted by the King in Parliament, upon the Petition of the Knights, Citizens and Burgesses. *An. 9. Ed. 3.*

Statute of Money made at *York*, was enacted by the King, with the assent of the Prelates, Earls and Barons, and the Commons not so much as named. *An. 9. Ed. 3.*

Statutes made at *Westminster*, were made and established by the King, with the assent of the Prelates, Earls, Barons, and other Nobles of this Realm, and at the request of the Knights and Commons. *An. 10. Ed. 3.*

Statutes of Purveyors made at *Westminster*, were enacted by the King, with the assent of the Prelates, Earls, Barons, and also at the request of the Knights of the Shires, and the Commons by their petitions put in the said Parliament. *An. 10. Ed. 3.*

Statutes made at *Westminster*, were to the honor of God, and of Holy Church, by the assent of the Prelates, Earls, Barons, and other assembled at Parliament. *An. 14 Ed. 3.*

And see almost all the Acts of Parliament in *Ed. 3.* his time, after in *Rich. 2. Hen. 4. Hen. 5. Hen. 6. Ed. 4. Rich. 3.* the King always made the Law, and the Lords Spiritual and Temporal did assent, at the instance, request or petition of the Commons; or by the King with the assent of the Lords and Commons; which was not, or but rarely used, unless in *Rich. 2.* his time. In *Hen. 7.* his time, the Commons got to have their assent, as well



as the Lords in passing Laws. And this manner of passing Laws continued generally until *Edward the Sixth's* time, where they were sometime made by the King, with the assent of the Lords Spiritual and Temporal, and Commons in Parliament, and sometime by the Parliament: But the form of enacting Laws by the King, and the Lords Spiritual, Temporal, and Commons assembled in Parliament, was seldom or never used before *Queen Mary's* time.

Sessions of  
Parliaments,  
do not de-  
grade from Re-  
gal Power.

So that it is as clear as the Sun at noon-day, That a King of *England*, by the ancient usages of this Nation, is as free and absolute in the Session of Parliament, as our. And the Act of a King in Parliament, is the free and voluntary Act of an absolute Monarch; for the Act of the King in Parliament passed by the assent of the Lords Spiritual and Temporal, and at the Petition of the Commons, is not less the act of the King, because it is so passed; unless a man will deny, that my Will being a faculty of my Soul, cannot imperate an act, if it takes information from my Understanding or Reason; Reason and Understanding being in proportion to the Will, as Counsel is to a Law. King *Charles* of Sacred memory, commends to his Son, the then Prince of *Wales*, in his last Letter and Admonition to him (though for his own particular he had little Reason (God knows) so to do) the frequent use of Parliaments, as the best means, by which, Laws may be received of the Subjects, and diffused to all parts of the Nation, and to hold a right understanding between the King, and his Subjects.

But as *nullum medicamentum est idem omnibus*; nay, the same Medicine at one time may kill the same person, which at another time may cure him: And that thing, which at one time may be a very probable reason of an action, at another time, may be none at all, or quite contrary to Reason: So in Reasons of State, that may be a very probable reason at one time, which may be none at all, or perhaps destructive at another time. As *Henry the Third* had great Reason of State, to form a House of Commons, and endue it with large privileges, to secure himself against a stubborn and rebellious Nobility: But King *Charles* had not the same Reason of State to indulge the House of Commons, contriving the destruction of himself, the Church and Nobility, Laws and Liberties of this Nation. *Edward the First* had great Reason of State to call a Parliament, and to pass the Act *De Tallagio non concedendo*, for otherwise as the state of affairs then stood, he could neither get money to assist his Friend and Ally, the Earl of *Flanders*; nor relieve his distressed Subjects in *Aquitaine* oppressed by the French King (which Sir *Edward Coke* in his Comment upon this Statute observes;) but King *Charles* had not the same Reason of State, to call the Parliament in 1640, who (instead of assisting their natural Sovereign against a rebellious Rabble of Mungrel *Hebrides* and *Lysiks*, give them Three hundred thousand pounds to be exported out of the Kingdom for their Brotherly assistance.

*Edward the First* had great Reason of State to pass the Statute of *Mortmain*, when as men were so superstitiously given, that no man thought he could merit Heaven, if he gave nothing to the Church; whereby such large Revenues accrued to the Church, that the third part of the Revenues of the Nation was in Church-mens hands; who pretending exemption from the Temporal Power, if some remedy were not taken, the King would probably be left destitute of means to protect himself, and his Subjects;

jects; yet is there not now that Reason of State, when in a Sacrilegious age, all the Patrimony of the Church goes to wrack and ruine; and men of Badges of Sacrilege, make marks of Saintship. It were endless to enumerate how Reasons of State vary with the times: It must suffice, that there be means always in the Supream Power, to remedy and cure the maladies and mischiefs of State, as they arise and represent themselves. Yet it is a remarkable thing, That they who oblige Kings and Supream Powers to their own Laws, will never be obliged by either their own, or any Laws of God, if ever the Supremacy comes to be vested in them; and let any man shew me in Five hundred years one time, wherein the Kings of *England* did alter the Laws out of Parliament, and I will shew him an hundred times in seven years, where men arrogating to themselves the name of Parliament, have altered the Laws without the King. They who oblige Supream Powers to Humane Laws, the Conditions must oblige God too to such things, as is contained in those Laws and Conditions, or else it is impossible for Powers to protect their Subjects.

But *Corruptio optimi est pessima*, there were never so vile things done as have been by Parliaments, or by men calling themselves so. Sir *Edward Coke* (being always mightily in love with Parliaments) gives instances but in two, viz. *Thomas Cromwel* Earl of *Essex*, and *Edmund* Earl of *March* (the true and undoubted Heir of the Crown of *England*) both condemned unheard, and without tryal in Parliament, when as he might have instanced twenty. Sir *Thomas Seimer*, Admiral of *England*, and Brother to the Protector, Anno 1549. the third year of *Edward* the Sixth, was condemned to death unheard by a Law in Parliament. *Henry* the Third after all the Acts of Grace of *Magna Charta*, *Charta de Foresta*, &c. (instead of means given him by Parliament, for the recovery of his right of the Dutchy of *Normandy*, usurped and taken by the French King from his Father King *Fohn*, and the Dutchy of *Guienne*, and Earldom of *March*, the year before usurped and taken from him by the French King) had all the exercise of Regal Government taken from him, and given to the Twelve Peers, by the \* Mad Parliament; whereof ensued the Barons Wars, to the destruction and confusion of so many English-men, as nothing but a Parliament could have done. *Henry* the Fourth in the first year of his usurped Reign, had the Crown entailed upon him and his Heirs in Parliament, from whence ensued all the Wars of the Houses of *Tork* and *Lancaster*. At a Parliament holden Anno Dom. 1470. begun at *Westminster*, 26 November, the Crowns of *England* and *France*, were entailed upon *Henry* the Sixth, and the Heirs male of his body lawfully begotten; and for want of such Heirs unto *George* Duke of *Clarence*, being the younger Brother of *Edward* the Fourth, the undoubted Heir of the Crown of *England*; whereby a double injustice was done, first to *Henry* the Sixth, excluding his Heirs general, then to *Edward* the Fourth, to prefer his younger Brother *Clarence* before him, in case of want of Heirs male to *Henry* the Sixth.

See the Factionous Conspiracy of the Commons, together with the consequence against the Duke of *Suffolk*. *Speeds History, Henry 6. p. 675. Barb. 47. 48.*

The Parliament in the First of *Richard* the Third his Reign (though a bloody Usurper) presented a Bill for the entailing the Crown upon his Heirs. Nor was the Act of Parliament less injurious, which entailed the Crown upon

*Inst. 4. page 37. 38.*

Good Governors are the Preservers or enlargers of the Government. Parliaments have ever been the bane of the greatness of the English Monarchy. \* *Insanum Parliamentum.*

*Anno 1 Hen. 7.*



upon *Henry* the Seventh, and the Heirs of his body, (he having no colour of title to it, but in right of his Wife) and because he suspected his title, and reigned in his own right to the wrong of his Wife, and after her decease, to the wrong of his Son *Henry* the Eighth, in the eleventh year of his Reign, he got an Act of Parliament to pass, which should protect all Subjects who should assist the King (be he so by right, or not) for the time being. So that other offences should be punished; but he that perpetrates the highest villany by invading a Crown, should be protected by Law. *Henry* the Eighth, by authority of Parliament, *an.* 1533. Bastardized Queen *Mary*; and so soon as he had cut off *Anne Bullens* head, by authority of Parliament Bastardized Queen *Elizabeth*, smally to his credit, one would think.

Add hereunto the ridiculous, yet cruel Act of *Hen.* 8. his Headship of the Church: So that a stranger being one day in *Smithfield*, and seeing one burnt for denying the Six Articles, and another hanged for denying his Headship, cried out, *Bone Deus, quo modo hic agunt vivi! hic comburantur Papista, ibi suspenduntur Antipapista.* The bloody Laws, passed in Parliament in prosecution of the Six Articles, in the time of *Henry* the 8. and the bloody Parliamentary Laws for Religion, in Queen *Mary's* reign, &c. and all those Sacrilegious Acts made in the reigns of *Hen.* 8. and *Ed.* 6. and sure no man can imagine such horrid acts could be perpetrated but by Parliaments.

Nor have the General Assemblies in *France* (who were wont to be assembled once or twice a year) demeaned themselves much better then the Parliaments in *England*; but in stead of providing good Laws, fell into such Factions, and used such affronts to the Regal power, that *Lewis* the Eleventh (a most subtle and cunning Prince) was wont to say, It was time to put the French Kings, *hors de page*, out of their minority, and from being Pages any more; and so he did. And since his time they have been rarely convened in *France*: For since the General Assembly at *Blois*, *anno* 1587. by *Henry* the Third, where the famous Duke of *Guise* was killed, there hath been but one, *anno* 1614. in the fourth year of the reign of *Lewis* the Thirteenth; and that succeeded so illfavouredly, that there is no probability of ever being another.

4. Besides the general and particular Customs, and Acts of Parliament, there are almost infinite Corporations, Colledges and Companies, who have divers and sundry priviledges, which are granted by the Kings Letters Patents, and are observed as Laws, and to all intents and purposes have the effect of Laws.

5. But in all Maritime cases, (the Kings of *England* being Sovereigns of the Narrow Seas, whatsoever *Grotius* says to the contrary) and all actions done upon a Navigable river, are judged by the course of Civil law; and so the Probate of Wills, and Letters of Administration are determinable by the Civil law.

Judge *Fenkins*, a learned Gentleman, and a stout Champion for the Laws of this Nation, in the first page of his *Lex terra*, divides the Laws of this Nation into three grounds or species, *viz.* 1. The Customs, 2. Acts of Parliaments, and 3. Judicial Records; and that the two latter are declarations of the former touching Royal government; so that he makes Custom to be the ground of Royal government, and Acts of Parliament to have but a declaratory power of the Common Law touching Royal

Royal government, and Judicial Records to be equivalent to Acts of Parliament. In all which he is most manifestly mistaken: For first, there are an exceeding many Acts of Parliament, which have no manner of dependence or affinity with the Common-Law, and so cannot be declarations of it; nay, there are many Acts of Parliament which are so far from being declarations of the Common-Law, that they do annihilate it, and create other things in lieu thereof; as the Statute of *West. 2. cap. 1.* called the Statute *de donis conditionalibus*, annihilated all the Conditional estates in Fee at Common-Law, and created estates in Tail in lieu thereof. At Common-Law, no Lands or Tenements were deviseable by Will; but the Acts of 32 & 34 H. 8. create a power of devising Lands and Tenements in Fee, by Will; and Tenants at Common-Law might choose whether they would attorn to any Grant of the Lord; but now the Lords Grant is good without it, by 27 H. 8. cap. 10. Sir Ed. Coke *com. on Lit. sect. 574.* says, *Stat. 32. H. 8.* takes away the reason of the Common-Law; so that, that cannot be a declaration of what, it takes away the reason.

It were tedious to instance the Acts of Parliament which give one Jointenant a power to compel the others to sue a Writ of Partition, which was denied at Common-Law; and right of Entry, where they were put to their *Cui in vita, &c.* It may suffice, that in no Kings reign there have not been Acts of Parliament, which have been so far from making declarations of the Common-Law, that they have made manifest alterations in it. And as the Common-Law hath no force nor reason against an Act of Parliament, so hath no particular Custom any force or reason against it, for no man can prescribe against an Act of Parliament; and all Lands in Gavelkind were particular Customs, but taken away by Act of Parliament. And many Acts of Parliament have not declared the Succession of the English Diadem according to the usual custom thereof, but made manifest alteration thereof, as in the Succession of *Hen. 4. 5. & 6. Rich. 3. Hen. 7. & 8.* which being unjust, and the cause not depending upon Humane laws, ought not to be obeyed.

Nor (secondly) is that a less error, that Judicial Records are equivalent to Acts of Parliament; for they are so far from being equal to Acts of Parliament, that in truth they are no Laws, but Inferences and Conclusions which are deduced from Laws. For there is not any Judicial Record, which is not unjust, if it cannot truly and ultimately be resolved in some general or particular Custom, Act of the Parliament, or grant of the King. So that Acts of Parliament, the Common Law, Particular Customs and Prescriptions, and Royal Grants, are as Axioms, *Postulata*, or Principles in Arts or Sciences; and Judicial Records, Reported Cases, and Years-books, are Inferences, Conclusions, or Sciences deduced from Acts of Parliament, the Common Law, and particular Customs of this Land, or Concessions of the King.

*Touching Royal Government;* Royal Government being the ordinance of God, and from the Law of Nature, is paramount to all Humane laws, and the prime and efficient cause of them; they cannot therefore declare the cause, so as to create any obligation, of what they are but the effects, and from whence derived.

We have thus far treated of the means by which the Kings of this Nation have (until 1640.) governed and preserved their Subjects internally,



nally. But because it is the office of Kings, to preserve their Subjects as well from foreign force, as internal broil; there is yet something wanting, of which we have not treated, *viz.* The power of making War and Peace, and maintaining Alliance and Traffique. Of these, in regard they refer to Foreign powers and jurisdictions, and are not subject to the Laws of the Nation, we shall forbear to treat; only affirming that it is necessary that at all times this power must be so vested in the King, that at all times he may have the aids and assistance of his Subjects in prosecution of the Ends aforesaid.

*The end of the Third Book.*

### The Contents of the Fourth Book.

**H**AVING thus far treated of all created Rights, and the causes of all Laws and created Powers and Vertues, and these being previous and necessary to all Justice and Obedience; We in this Book descend to treat of Justice in the first Chap. as the most eminent and noble of all Humane vertues, it being that which not only conserves private Families, but all Nations and Kingdoms in unity, peace and society; and demonstrate it neither to be in Geometrical proportion, as Plato would; nor Arithmetical proportion, as Zenophon held; nor in Harmonical proportion, as Bodin taught: Nor is that corrective and distributive Justice, which Aristotle affirmed to be in Arithmetical, and in Geometrical proportion.

*The Second Chap. treats of Obedience, and shews how that it necessarily proceeds, and yet is different from Justice.*

*The Third Chap. treats of Judgment, and shews how it differs from Law and Justice.*

*The Fourth Chap. treats of Equity, and shews how it differs from Judgment, and how necessary Courts of Equity, as well as Judicature, are.*

THE



# THE FOURTH BOOK:

## CHAP. I.

## Of Justice.



*Justitia est habitus animi communi utilitate servata, suum cuique tribuens, & Societatem conjunctionis Humanae munificens, atque aequè tuens.* Justice is a habit of the Minde, common utility being conserved, giving to every one their right, and bountifully and equally defending the Society of Mankind. *Et Justitia est quæ suum cuique distribuit;* Justice is that which does distribute to every man what is his right. Where he says, *That Justitia est obtemperatio scriptis legibus;*

Cicero's definition of Justice.

Cicero, lib. 2. de legibus.

bus; we will shew that is not properly Justice, but Obedience onely.

2. Justice is the upright doing of an act conserving Society, in that formality as it is commanded, or permitted by him, who by right may command or permit it. Justice is the doing of a just action; the doing of a just action, is the upright doing of any act, as it is commanded or permitted by him, who by right may command or permit it, preserving Peace and Society. I say, Justice must have these two properties, viz. upright doing (that is, abstraction from all affections of love, hate, or self-interest) and the Law or Command of him, who by right may command or permit such an act: Other actions proceeding from Wisdom, Reason, Experiment, or Discourse, &c. are prudent, profitable, &c. but none are just, or honest actions, which cannot be truly and ultimately resolved into the Law or

Quid sit Justitia.

Bb

Command



Quetuplex.

Command of him, who by right may command, or permit such an act. So that Justice is twofold, either commanded or permitted.

What is Injustice.

3. Injustice is the abuse or falsifying the Law or Command of him, who by right commands, to the hurt or prejudice of another. As a Law preceding and Integrity, are inseparable incidents to Justice; so Hypocrisy, seeming just, and yet abusing or falsifying a Law, and the damage of another or more, are incidents inseparable to injustice.

God commands by highest right.

4. Let us see who may by right command, and who are obliged to do in conformity to their Laws and Commands. I say, God by highest right ought to command all the created things in Heaven and Earth; and all Creatures are chiefly and absolutely obliged to do whatsoever he commands, without any reasoning or disputing why he so commands; *For the earth is the Lords, and all that therein is; the Compass of the World, and all that dwell therein: And whatsoever is under the whole Heaven, is Gods; and the World is mine, and the fulness thereof.* All Gods commands therefore have a like and equal influence upon all his Creatures; all Creatures, as compared to him, are alike vile, and between him and them is no proportion. To abuse then or falsifie any Law of God or Nature, to the hurt or prejudice of another, is a sin of injustice in all Gods Creatures; and therefore in all men, and therefore in all sorts of men: As if any man promises another, that he will do, or give him such a thing, although it be to his hinderance, he wilfully breaks his promise. I say, this is a sin of injustice in the promiser; for he abuses and falsifies the Law of Nature, which obliges every man to the performance of his promise, to his hinderance, to whom he made his promise. And though this be the Law of Nature which does onely oblige in Conscience, yet is such a promiser an unjust man, nor does he deserve to be trusted as a friend, or honest man.

Psal. 24. 1.

Job 41. 11.

Psal. 50. 12.

Annot.

But this must always be understood of private men, and they not pre-engaged before, for the first promise is to be performed: Neither must the performance of a private mans promise, be to the hurt or damage of another man; for by the Law of Nature he was obliged to hurt no man, and to give to every man his due, before he made such promise. A publick person promises to another, to do or give him such a thing which will be prejudicial to his trust, I say he ought not to perform it; for he was obliged to perform his trust, before he made such promise. What then, does preengagement, the not injuring of another, or publick employment, free men and let them loose from all Law of God and Nature? I answer, nothing less, for they sin not less then private freemen, in not performing their promise, but commit a greater sin in breaking their first promise, and betraying their publick trust, &c. then if they should perform their promise: So that in promising they sin, but in the performance they commit a greater sin.

Now Kings promises are to be interpreted and performed,

5. A King promiseth he will not hurt any of his Subjects in their persons or estates, without due Process, and after judgment given according to the known Laws. He being a King, was obliged as King to do to the best of his power, all things in order to the good and preservation of his subjects in general; and therefore is obliged to this latter promise onely, as it is consistent with his former: He ought onely to protect his subjects in particular, as it does relate to the good and benefit of his subjects in general. I say therefore, notwithstanding any such subsequent promise, is not any King

King obliged to it; but may in case of publick necessity, govern by Martial Law, and destroy any particular Subjects estate, rather than enemies; or seditious men should make advantage thereof to the endangering of the publick: Nor is this any new thing, but always was in all species of Governments since the World began; nor does any King sin in making such promise, for he may justly do it, and thereby secure the mindes of his Subjects, who would otherwise be in a continual diffidence; nor does he sin in not performing this promise, when it becomes inconsistent with the publick good; for no King can possibly foresee all the publick necessities and dangers which may happen.

6. No mans being greater or lesser, does free him from his duty which he owes to the Laws of God; all men being alike, as compared to God. Kings therefore being so, are not disobliged to the Laws of God and Nature: It was therefore a sin of injustice in *Ahab*, to take the possession of *Naboth's* Vineyard, the property and inheritance of the *Israelites* being given by God, and unalienable by the Children of *Israel*. I say this was a sin of injustice in *Ahab*; for his being a King, did not free him from Gods Laws, but did without any publick necessity, abuse the power and command which God had given him as King, to the damage and hurt of *Naboth* and his posterity. *Dauids* putting *Uriah* to death, and *Ahabs* consenting to *Naboth's* death, although after his death, were sins of injustice; for they were entrusted by God to be Kings for the good of their Subjects: Whereas they did abuse and falsifie their trust to the highest wrong of others, whom they ought to have protected: *Princes are Gods Ministers for their Subjects good.*

Injustice in Princes.

7. Man being a reasonable and sociable Creature, which being inconsistent with community and parity, and mankind being onely conservable in Society, that is in the mutual commanding and obeying of different parties: And as God by highest right, ought in all things to be obeyed, so Kings ought to be obeyed next after God in all things: For every Soul ought to be subject to the higher powers; for there are no powers but of God, and the powers that be, are ordained of God: And through me Kings reign, and Princes make just Laws. All things therefore which Princes command (where God hath not left necessary Laws for the good and governing of their Subjects, which he was onely pleased to do to his peculiar people the *Israelites*;) are therefore just, because they command them, they commanding nothing repugnant to the Laws of God.

Rom 13. 4.  
Kings by right command next after God.

Rom. 13. 1.  
Prov. 8. 15.

8. A Prince commands a Judge to execute the known Laws uprightly; he becomes corrupt, and sells, or otherwise purloyns judgment. I say this is a sin of injustice in the Judge, for he abuses the command of his Prince, who by right might command him to the damage of another, against whom false judgment is given. It is an act of injustice in all Subjects in general, to abuse the trust committed to them by their Sovereigns; for he by right may command, and entrust them; nor can they abuse their trust, but it must be to the damage of the Prince, or some other. But besides express Obedience of Subjects to their Sovereigns, when they are particularly entrusted by them, there is a general and implied Obedience which Subjects ow to their Sovereigns, and the Laws of their Countrey, as Subjects; whether they be employed in any place of trust, or not: For subjection being in the predicament of Relation, does imply a right of command; and

Injustice in Subjects.



no man can be subject, where there is nothing to which he is subject. It is therefore a sin of injustice in any Subject, to pretend or abuse any of his Countries Laws, to the hurt or damage of another.

Highest injustice in Subjects.

9. Since therefore, Kings by highest right, next after God; may command; then by consequence is that the highest sin of injustice, next after Luciferian pride of Creatures, making themselves equal or superior to their Creator, for Subjects to tread under foot all Sacred and Civil Laws, to make themselves superior to their Sovereigns, to whom by all Divine and Humane Laws they ow their obedience, to the ruine and destruction of so many thousands of innocent men, women, and children, and families of all sorts, which must necessarily come to pass in the attaining their ends. And that Subjects do abuse all Humane Laws, in pretending them to the advancing of themselves above all Humane Laws, and their rightful Superiors; There neither is, nor ever was, any Government in the World, good or bad, just or unjust, that did ever permit subjects, without authority from it, to take up arms: And by our Countrey-Laws, *If any man levy war to expulse strangers, to deliver men out of prison, or against any Statute, or any other end, pretending Reformation of their own head; this is a levying war against the King, because they take upon them the Royal Authority, which is against the King.* Inst. 3. p. 9.

Nota.

All Oaths, Promises, &c. made against Prince or Laws, are void. Husbands by right may command their Wives.

1 Tim. 2. 13. Justice and injustice in a Wife.

Of Justice and injustice in Wives and Children.

Whether the Wife ought to obey the Father or Husband.

10. All Stipulations, Oaths, Promises, &c. made by Subjects against their Prince, or Laws, are void, and not to be performed; for they were Subjects, and obliged to their Prince and Laws, before they made such Oath, Stipulation, Promise, &c.

11. God is not onely the Author of Government and Obedience, of Order, and Society in Nations and Kingdoms, but also in Man and Wife; for being reasonable and sociable Creatures, does imply a necessity of mutual commanding and obeying. God first created man, and by so creating him, gave him the power and dominion over the woman. It is therefore an act of Justice in every Wife, uprightly to fulfil the Law or Command of her Husband to the benefit of him, or another, he commanding nothing derogatory to the Laws of God or his Countrey; and a sin of injustice in the Wife, to falsifie or abuse any Law or Command of her Husband, to the hurt or prejudice of her Husband or another.

12. God is not less the Author of Power, or Right of Command in Parents, then in Husbands. As therefore it is an act of Justice for Wives and Children, uprightly to do any act which is commanded them by their Husbands and Parents (they not commanding contrary to the Laws of God, or their Countrey) so it is injustice in Children, as well as Wives, to falsifie any Command or Law of their Parents, to the hurt or prejudice of another.

13. Suppose the Father and the Husband command the Wife contrary things, whereby it becomes impossible that the Wife should serve both: Which ought she to serve? I say, the Husband: For though the Fathers power be from God, and so inseparable by any act of Man; yet is not God obliged to his own Laws, but may give that which he gave the Father, to another. And Matrimony being an Institution of God in Paradise, and the Husbands power from the Law of Nature, that is from God, the Wife becomes subject to her Husband; retaining notwithstanding her piety and observance, which is always due to her Father.

14. All

14. All Societies, that is, all companies of Men, whether of Master and Servants, of Father and Children, of Husband and Wife, of King and Subjects, are contained in the mutual Offices of commanding and obeying. It is true, that *Cicero* says, *Cum dico legem, à me dici nihil aliud intelligi volo, quam imperium; sine quo nec domus ulla, nec civitas, nec gens, nec hominum universum genus stare, nec rerum natura omnis, nec ipse mundus potest.* Where therefore the Laws of Nature are not sufficient, there must be a supply of Humane Laws. We have shewed before, that the Power or Right of Command, which Kings have over their Subjects, which Husbands have over their Wives, which Parents have over their Children, is from the Law of Nature, that is from God immediately, I say, they command by the Law of Nature: For all right of command which is not from any Humane Law, is from the Law of Nature; but Kings, Parents, and Husbands have a right of command, and not from any Humane Law, they have it therefore from the Law of Nature. But though Masters of Families have a right of command over their Servants, yet formally they do not command by the same right that Kings, Fathers, and Husbands do: For I deny, that ever any Master of a Family had his power from any Law of God (I except the *Israelites*) or Nature; but that ever since there were Families; the Masters, or Mistresses of the Families derived and had their power or right of command over their Servants, from their Countries Laws. If *Adams* Family be objected, I say, that *Adam* commanded not as Master of a Family onely, but as a Universal Monarch, not onely over all the Creatures irrational that God had made, but also over his Wife and Posterity as King; and not as Father and Husband onely: For no Father, or Master of a Family, can create any property in his Son or Servant; nor had ever any Subject (who was not an *Israelite*) property, from any Law of God or Nature. But it is evident, that *Cain* had property in the Fruit of the Ground, and *Abel* in his Flocks; they therefore derived it from *Adam* as King.

Masters of Families by right command their Servants.  
*Cicero, lib. x. de leg.*

Obj. 2. Sol.

Gen. 4. 3, 4.

15. Since Humane Laws are necessary for the conservation of all Societies of Men, and the Masters power not being contrary to any Law of God or Nature, the Master of every Family hath right of command over his Servants by the Laws of his Countrey, he commanding nothing repugnant to the Laws of God or his Country. It is therefore Justice in every Servant, uprightly to execute such commands of their Masters; and injustice to falsifie or abuse such commands, to the hurt, or prejudice of another.

Of Justice and injustice in Servants.

16. Suppose the Father makes his Son a Servant (for every Father hath the same right over his Childs person, that a King hath over his Subjects) and the Father and Master command the Son contrary things: Which shall the Son serve? I say (the Fathers power being from the Law of Nature, and so inseparable by any act of Man) the Son ought to serve the Father; but the Father being as much in the power of his Sovereign, as the Son in his Fathers, the Father shall make good to the Master whatsoever he shall be damnified by such command; the Laws of the Fathers Countrey obliging Subjects to perform their Contracts.

Whether the Son ought to prefer the commands of his Father or Master,

17. Suppose



How far the  
Servant owes  
his Master  
subjection.

Object. 1.

Object. 2.

Injustice in  
Commuta-  
tion.

Of permissive  
Justice in a  
King.

In a Subject.

17. Suppose the Master command contrary to the Laws of God or his Country, and the Servant executes such command, shall this excuse the Servant? No; for being a Servant, does not free him from the obligation of the Laws of God or his Country, as a Subject. Well, but if the Master commands upon corporal punishment, (for the Masters power obligeth to corporal punishment) to do something contrary to the Laws? I answer, That *jus vita & necis*, which Masters had over their Servants, is generally restrained every where as well among *Mahometans*, as *Jews* and *Christians*, where men are of the same faith: So that Masters cannot put their Servants to death, as Masters, for any crime: If they otherwise punish them unjustly, the Servants have their remedies by the Laws of their Country. But who shall judge whether this be contrary to the Laws of God or his Country? the Master, or the Servant? I say, not the Servant. But if the Servant may not judge, yet has he not a Conscience as well as his Master? I answer, That Ignorance, and an ill-set Conscience, excuseth no more from doing what he ought; and Servants actions in general ought to be done about the Masters persons or affairs, in which it is a very hard matter for the Master to command any thing contrary to the Law of God, or his Country. But if the Master does command his Servant to do any act in prejudice to another, (if it be not so much as the Master cannot make satisfaction, as to kill or maim another) the Laws do make a favorable construction of what is done by the Servant, as Servant, and punish the Master as commanding, and not the Servant as doing in order to such commands. In a Masters commands to a Servant, is usually implied a Warranty which secures the Servant for doing what he commands him.

18. It is Injustice in any man to tell another, that he gave such a price for such a commodity, whenas he gave not so much; thereby to deceive another, who believes him, and gives him thereafter to a greater value then the thing is worth. I say, this is a sin of injustice in the Seller; for, in Lying, he did falsifie the Law of the God of Truth, to the damage of the Buyer.

19. In Justice commanded, no man ought to do more or less, but to the utmost of his power ought to do what is commanded him, in that formality as it is commanded. In Justice permissive, it is not always so; but the utmost or rigid exacting of what is permitted, is highest injury: As a King is permitted to execute his Laws; but the rigid executing of all Laws against all Offenders, at all times, without any consideration of inability, or other circumstance of person, time, or place, is highest injury to his Subjects: For it is impossible (though Laws should be general, and not respect the persons, but the good of the Subjects) that all Laws can, at all times, be alike observed by all Subjects: And therefore though it be permitted to a King to execute all his Laws, or else he should have none to be executed; yet in the execution of them he ought to weigh circumstances of person, time and place; whether it were the malice, or defence of the person offending; or whether he were able to fulfill such Law, or not, &c. Or otherwise, *Summum jus, est summa injuria*.

20. As a King, so ought not a Subject rigidly to exact of another whatsoever is by Law permitted him, at all times: As a Tenant by sterility of the year, inundation of waters, &c. is so damnified, that he is not able fully to satisfy his Landlord, but to his utter ruine: I say, in such case the Landlord

Landlord ought to remit of what, by rigor of the laws, he might justly take: Or if in such case the Landlord shall rigidly exact his utmost due, to his Tenants ruine, (when it is not the Tenants fault) such exaction, such *summum jus, est summa injuria*. A man is permitted to sue any man for triflings, *tres passes of pedibus ambulando, &c.* yet if upon all occasions a man shall sue every man that steps out of the footpath, such a man will be counted a wrangling knave, and such suing *summa injuria*. Yet is not the Law in fault, but the men; for if it were not permitted to men to exact their rents, and sue for small trespasses, then would no Tenant pay rent, nor should any man be secure of enjoying what he is posselt of.

21. It is true that *Aristotle* says, *That he is a just man that keeps the laws, and that he is an unjust man who commits contrary to laws; and that therefore one Justice contains all other virtues.* God having made Man as well a sociable, as reasonable creature, and a free Lord of all his actions, whose will may freely imperate his actions (not as it is with irrational creatures, whose objects determine their actions) as he pleaseth; neither did ever yet in this world any man do any act virtuous or vitious, but it was freely in his own choise whether he had done it, or not: And by making him sociable, made him more excellent then the other creatures of this orb. We do not therefore look for Justice in so large a sense as *Aristotle* here takes; where every particular or personal virtue may be taken for Justice.

who is a just  
man.  
Esb. lib. 5,  
cap. 2. 3.

22. We take that virtue to be Justice, which conduceth to the preservation of Society; (for, other personal virtues, as Temperance, Chastity, Frugality, &c. although not as virtues, yet may they be found in other creatures:) which is only proper to Man, and wherein Man does excell all other creatures. And no question but that the meanest Servant, uprightly and conscientiously performing the trust and command which his Master commands him, is as just and honest a man, as the greatest man whatsoever.

The excellen-  
cy of Justice.

23. Nor is it less true that *Aristotle* says, *That he that commits any thing against the Laws, is an unjust man; and so the commission of any thing against the Laws, is a sin of injustice; and every sin, a sin of injustice:* But by reason of humane frailty, it is very difficult, if not impossible for the most just man, not to be an unjust man, where injustice is taken in such a latitude: And in this sense, the most just and righteous Subject that ever was, stands in need of Gods mercy and the Kings. But the injustice we look for, we take in a more restrained notion; not every unlawful act done upon ignorance or passion, &c. but where men premeditately and wilfully make the laws of God or man, a cloke and pandar to shelter and hide their unjust and illegal actions: They that tread under foot all Sacred and Civil sanctions intended for the conservation of peace and society among men, to set up themselves above all laws of God or man; and to make way for their own lusts, in stead of Divine and Humane laws; They who, the Prophet *David* says, *imagine mischief as by a law:* Such men, such actions, are most properly unjust men, and acts of injustice.

who is an  
unjust man.

*Psal. 94. 20.*

24. Injustice differs from Injury, only in agencie and patience, in him who does, and in him who suffers. It is injustice for any man, unjustly to make use of any Law of God or man, or Temporal power (which must be from some law of God or man) to the hurt or prejudice of another; and such hurt or prejudice, is injury to whom it is done.

How Injustice  
differs from  
Injury.

Damage



How Injury  
differs from  
Damage.

*Valenti non fit  
injuria, how  
to be under-  
stood.*

S. Matth. 23,  
26, &c.

pag. 747.  
Plato's opini-  
on of Justice.

Rejected by  
Bodin, as re-  
pugnant to  
himself.

Xenophon's  
opinion of  
Justice.

25. Damage is nothing else but loss; Injury is loss unjustly done. So that all Injury is damage, but every damage is not injury: As a man hath a house &c. burnt by lightening; this is damage, not injury: A man is punished justly for some fault; this is damage, no injury. Injury always is done by injustice, that is, when the doing is countenanced by some Law, or Greatness: Damage is, when the doing is neither countenanced by Law or Power; as Neighbors who live by one another, do usually do one another Trespas, which is damage, but no injury.

26. We have declared before, that no man ought to make use of (or abuse indeed) any gifts whereby he does excell another, to the damage and hurt of another, who is not so well qualified. And no question but that God will require of every man an account of all those talents wherewith he did entrust him for good: And if he were pleased to punish him so severely, who had hid his talent, because he had not increased it and done good; how severely then will God take revenge upon him, who abuseth those natural gifts wherein he excells another, to the hurt and prejudice of his weaker brother? But humane laws being made for the rule of outward actions, (for only God sees the hearts and inward thoughts of men) Courts of Judicature cannot judge whether it were this mans folly, abused by the craftiness of another; but whether this man did this thing, or not; and no Fool or Madman shall be received against his own act, although his Heir shall. It is not therefore that an innocent or foolish man may not be injured, although he will willing; but that he shall not be judged injured by any Civil Court, where it may be made appear he was willing.

27. Bodin in the sixth book *cap. 6. de repub.* says, That Plato judged that the best form a Commonwealth, which was compounded of Popular command, and a Tyrant: (Note, the Grecians did usually call Kings Tyrants, and did many times take Tyrant in a good sense) yet dissenting from himself, he made his *Civitas* not only in State, but also in manner of Governing, Popular; as one who gave to the multitude of all the Citizens the power of making Laws, of creating Magistrates, of indicting War, of making Peace, and lastly of giving rewards and punishments. A *Civitas* being established after this manner, he denied it could be happy, unless it were governed by a Geometrical proportion; for he thought that God, the most ancient Moderator of this world, whom every best Lawgiver ought to imitate, does preserve all things in Geometrical proportion. He was often wont to boast, *αἰεὶ τὸν θεὸν γεωμετρεῖν*. Which things, although they be Plato's, yet are no where found in his writings. But a Popular Empire constituted by Plato, is plainly contrary to Geometrical proportion, because the people follow an Equality of things: And Equality agrees with Arithmetical proportion, no ways with Geometrical.

28. And because Xenophon, emulous of Plato, thought that Cities and Laws ought to be constituted and distributed in Arithmetical equality, induces Cyrus, as yet a boy, beaten, because created a King by his companions, he had so commanded the Vestments to be exchanged, that the greater were given to the greater, and the lesser to the shorter. Cyrus so beaten by his Master, is taught that he is born a Persian, and therefore should use the laws and manners of the Persians, which give that to every one, which is his property; not the Medes, who thought that, that was to be given to every one, that was fit and commodious for him. Plato, when he was advertised the

the

the stripes were to be inflicted upon him, not *Cyrus*, rejected *Cyrædia*. This contention therefore of *Xenophon* and *Plato* being divulged by speeches among the *Grecians*, afforded increase to two factions of the Great men, and People: Some following the Popular state, did greatly love the Arithmetical proportion of Justice; Others, because they did excell in Riches and Nobility, were not less in love with the Geometrical proportion, agreeing with Aristocracy. (But it is strange, *Plato* bred in a Popular State, should assert Justice to be in Geometrical proportion; and *Xenophon* in a Mungrel Aristocracy, made up of two Kings and the *Ephori*, should assert Justice to be in Arithmetical.)

29. Justice in Arithmetical proportion, he says, was like *Polycretus* rule, Pag. 751. a. 1 compared. of all the most right, and as it were, Iron macerated with Vinegar, so as it should be inflexible. The Geometrical form of governing a City, did imitate a *Lesbian* Rule; for, this was made of Lead, and flexible in every part, that so it might be accommodated to every thing, that nothing might be lost of the matter of it, so far as it might be done. But this (he says after) being so flexible, loses the name of a Rule.

30. But neither of these forms of Justice will down with him: For in the Arithmetical form, he says, That women, tender and young children, old men, and those afflicted with sickness, should have the same punishment for the same offence, with robust and stout men; which might be fatal to one, and not scarce felt by the other. Yet was this against the practice of all Democratical States; for neither in the *Roman* nor *Athenian* States, were all men alike punished for the like offence: The *Romans*, who were *civitate donati*, were not by the Laws to be put to death, nor punished as Slaves for any offence. Nor were the Popular States less dissenting from their Principles in conferring rewards and greatness upon men: For, when were men ever so great, as in Popular States? as *Pompey*, *Cæsar*, *Crassus*, *Lucullus*, *Pericles*, &c. 764. Xenophon's opinion rejected by Bodin, and why.

31. Nor is he less out of love with the Geometrical form of Governing, or Justice; for then, he says, all Patricians or Noblemen must marry only with Patricians, and Plebeians with Plebeians; all places of Honor must be always conferred, not for virtue or desert, but as men were Great, or Noble: So that from hence he says, were almost perpetual dissensions between the Senators and Plebeians, until the Consulship, Censure, Preture, and the High Priesthood were communicated to the Common people, some few excepted. Plato's rejected also, and why. P. 774. a.

32. Well, but because *Bodin* cannot find Justice to consist in Arithmetical nor Geometrical proportion, he will try what may be done by Harmonical, and says, That is worthy consideration, that they have divided both proportions of Justice, but have no where remembered the proportion of Harmonical Justice. Neither any of the Latines, or Grecians ever accommodated Harmonical proportions, either to the distribution of the Laws, or the moderating of the *Civitates*, (Governments I think he means) which as it excells the other in dignity, so also is it referred to the Regal kind of *Civitas* which we seek for, after a certain manner attempered by Aristocratical and Democratical proportion. (We shall, I believe, find a very odd Harmonical proportion, after a certain manner attempered by Arithmetical and Geometrical proportion.) Bodin's opinion of Justice. P. 747. d.



How proved.  
Pag. 751. C.

33. He defines the form of governing of a *Civitas* in the Harmonical Laws of Justice, to consist in these four terms, *viz.* The Law, Equity, the Action of the Law, and the Office of a Judge, which have the same proportion among themselves, that these four numbers, 4. 6. 8. 12. have. For what proportion 4 hath to 6. the same hath 8 to 12; and again, what proportion hath 4 to 8. hath 6 to 12; so also is *Lex* to *Equitas*, and the Action of the Law, to the Office of the Magistrate, and contrariwise; for the Action serves the Laws, and the Office of the Magistrate, Equity. But if you should transpose the numbers compounded by Harmonical Law, and make the Magistrate above Equity, and the Action superior to the Law; the Harmony of the City, and Convent of Musick will perish. It would vex any Saint, much more any ingenuous Reader, to see what a stir he keeps with converting numbers, in continued and dis-joyned Geometrical proportion, and all to no more purpose, then to read all the particular stories which he cites and makes to prove any of his Positions: Nor does he ever shew any colour of reason, how Law, Equity, the Action of the Law, and Office of a Judge, have like proportion to one another, as 4. 6. 8. 12. have.

Examined in  
his Politicks.

34. He says a little above in this Page B. and truly, that the Lesbian Rule, if it may be wreathed, because it is made of Lead, does lose the name of a Rule; and the force and name of a Law does perish, if a Judge may so bend and unbend it, in all the parts thereof, by his arbitrament, as if he were a Moderator and Arbitrator of the Laws, which ought to be a Minister of them; (now if by Equity he does not mean moderation of the Laws, let him mean what he will for all me; nor does he ever say what he means by it) yet he says, That as the Magistrate is the power of the Law, so is Equity in the power of the Magistrate, which is inconsistent with what he said before, That the Magistrate who is a Judge, cannot be a Moderator of the Laws; and with that which he propounds in his terms of Harmonical Justice, that the Office of the Magistrate or Judge, is subservient to Equity; nay he says, That the Harmony of the *Civitas* does perish, if the Judge or Magistrate be above, or superior to Equity. Here is fine Harmonical consort indeed, where the Judge or Magistrate is made onely a Minister, and not a Moderator of the Law; where the Office of the Judge is made subservient to Equity, and yet Equity to be in the power of the Judge or Magistrate; and the Harmony of the Citie to cease, if the Judge or Magistrate be above, or superior to Equity.

His Mathematicks  
examined.

35. First, Let us see whether he hath better success with his Mathematicks, then with his Politicks; although here he onely affirms 4. 6. 8. 12. to be in Harmonical proportion, yet he does not go about to prove it before Pag. 774. Well, but before we examine it, let us take the definition of Harmonical proportion: Harmonical proportion is, when three numbers are so ordained, that the difference which the Major and the Minor extream, have to the mean, is in the same proportion that the Major, is to the lesser: As 3. 4. 6. are in Harmonical proportion, because the difference which 6. the Major extream hath to 4. is 2. and the difference which 4. hath to 3. the lesser is 1. Now 2. the difference of the Major extream 6. to the medium 4. being double to the difference of 4. the mean, to the lesser extream 3. and 6. the Major being double to 3. the Minor, 3. 4. 6. are in Harmonical proportion. *Bodin* says, 4. 6. 8. 12. are in Harmonical proportion, as the proportion of the first to the second, and the third to the fourth is Diapent.

Page 774.

And

And again, the first to the third, and the second to the fourth is Diapason, the proportion of the second to the third containing a Diatesseron, coupling the first with the extremes, the means to either, procreates altogether a most sweet concent. But how does the Analogy of the second to the third, of 6. to 8. couple the extremes of 4. and 12. or how can 4. 6. 8. 12. be in Harmonical proportion; when as the difference of 12. to 8. and 6. to 4. is but double, and the proportion of 12. to 4. triple?

His first instance refuted.

Secondly, But though he hath not found Harmonical proportion here, (sure then his Harmonical Justice upon which it is built, will be but a very mean structure) it may be he findes it somewhere else, where he says, 4. 6. 8. are in Harmonical proportion; which because the difference of 8. to 6. and 6. to 4. is equal, and the proportion of 8. to 4. double, is impossible by the definition.

His second confuted.

Page, mat. 750.

Thirdly, Well, he hath but one instance more of Harmonical proportion that I know of, and if he be out at that, he is past cure, for ought I can help him. He says, that 1. 2. 3. 4. are in Harmonical proportion, he would prove it Page 776. A. the number two to three constitutes a Diapent, the number three to four a Diatesseron, the extremes from one to four a double Diapason: But this is nothing to Harmonical proportion; nor is it possible that 1. 2. 3. 4. should be in Harmonical proportion, when as the difference of 4. to 3. and 2. to 1. is equal, and the proportion of 4. to 1. is quadruple; nor can 2. 3. 4. be in Musical proportion; for the difference of 4. to 3. and 3. to 2. equal, and the proportion of 4. to 2. double; nor of 1. 2. 3. For the differences of the greater extremes are equal, and the proportions triple.

Page 775. D.

None of his numbers in Harmonical proportion.

36. Aristotle *Ethicks*, 6 Book, Cap. 7. declares the proper nature of particular Justice into Distributive, Corrective or Commutative Justice: This latter he says is in Arithmetical proportion, the former in Geometrical. Corrective, or Commutative Justice consists in Promutation, Buying, Selling, Exchange, &c. where the person of the buyer is not to be considered, whether greater or lesser, richer or poorer; but an equal value or price is to be taken by the vendor for such a commodity, be the buyer rich or poor. Distributive Justice consists he says in Geometrical proportion, and is referred to the dignities and merits of men; so that here men ought to respect the person and the quality of him, to whom any thing is attributed or given, *κατὰ τὴν ἀξίαν*, more to him who is more worthy, and less to him who is less worthy.

Aristotle divides Justice into

Corrective

and

Distributive.

37. It is true indeed, That if in Promutation a man sets such a value upon such a thing, and does not respect the person or quality of any buyer, that then such vendor does equally to all sellers, and in exchanging observes Arithmetical proportion: But if it be true, as it is that he says, That he is a just man that keeps the Laws, and that there be no Law which sets a price upon what thing the seller exchanges, or sells to another; then it cannot be a sin of Injustice for any vendor, not to observe this Arithmetical Rule which Aristotle propounds in Promutation.

Corrective Justice examined.

Eth. 1. 5. 2. 23.

38. Nor is it less true, That if a Prince in conferring honor, or otherwise rewarding a man for any merit, or great service done to him, or his Countrey, gives more honor, or reward to such a man, then to another deserving less; then such a Prince does a prudent action, and observes Geometrical

Distributive Justice examined.



metrical proportion in it; but what is this to Justice: For if there be no Law commanding such a thing, then cannot the not doing of it, be a sin of Injustice; nor is it properly a sin of injustice, not to reward or repay benefits, but of ingratitude.

*Grotius* his opinion of Justice

*Grotius*, Lib. 1. Para. 8. disputes against the opinion of *Aristotle*, That Justice is properly distinguished into Arithmetical and Geometrical proportion; but *Paragraph* 9. where he should declare what Justice is, he onely confounds, *Jus*, *Lex*, & *Justitia*; and instead of setting down what Justice is (which he neither does here, nor any where else that I know of) he forsooth divides *Jus* into *Jus naturale*, & *voluntarium*; which may signifie either of them, or both together *humdrum*. Community and Property, the Law of God, immutable by God himself, and yet mutable by the will of Man. In the Dedication of this *Jus Belli & Pacis*, he makes *Lewis* the Thirteenth to be just, because he does by imitating him; honor the memory of his Father; (yet do I think there were scarce ever two men more unlike;) and just, because he does by his example, instruct his Brother; and just, because he gave his Sisters great Portions; just, because he inflicts no great punishment upon his rebellious Subjects, (sure never man took Mercy for Justice before;) and just, because he allows his Subjects Liberty of Conscience.

## CHAP. II.

### Of Obedience.

Obedience, what.

1. **O**bedience is the accepting of the Law or Command of him, who by right commands; when I by no act of my will put any obstacle, whereby such Law or Command, may be executed or received.

How Obedience differs from Justice.

2. Obedience differs from Justice, as a part differs from the whole: Obedience is implied in Justice, Patience is onely necessary to Obedience, but Agency to Justice. Every just man must be an obedient man; but the converse do not always hold, That every obedient man, is a just man. As a Prince commands such a man to be a Justice of Peace, &c. in such a Town or Division, he is received by them of the Town or Division. This is an act of Obedience in them of such a Town or Division; not of Justice, because they are Patients onely, and not Agents.

How Disobedience differs from Injustice.

3. Disobedience is the refusing to accept the Law or Command of him, who by right commands. Injustice is the counterfeiting Obedience to Laws, and yet abusing them to the prejudice of another: As he who by right commands me to do such a thing, if I refuse to do it, This is a Sin of Disobedience: If I undertake to do it, and instead of upright doing of it, I abuse it to the prejudice of any man; this is a Sin of Injustice.

4. Obedience

4. Obedience is not only a virtue in it self, but also the first and only Introduction to all virtues Theological and Moral. For not only in Moral virtues I must subject my will to the rule and precept of him who by right commands; but also in Theological virtues my will must be the patient, and admit of Gods grace, as the prime and efficient cause, before it be possible that I should be qualified to do any virtuous action, either Theologically, or Moral; and God (being all good, and a lover of Man, and hating nothing that he hath made) freely offers this his grace to all men; and it is mans fault and stubbornness that he refuses to admit of this grace of God; without which nothing can be good, nothing can be just, or virtuous; without which no man can reasonably hope for any Temporal happiness in this world, or eternal Beatitude in the world to come.

The Excellency of Obedience.

Philanthropus

5. It is not alwaies the doing, or abstaining from what is commanded or forbidden, which is virtue, but only the ingenuous and upright doing or abstaining from that, which is commanded or forbidden, as it is commanded or forbidden by him who by right may command or forbid. I say that Ingenuity, integrity, and abstraction from all affections of profit, pleasure, love, hate, feare, &c. are essential to all virtues; for if the doing or forbearing any action proceeds from any of these causes, then is not that action virtuous, but profitable, pleasant, lovely, hateful, fearful, &c. *Jehu* did what God commanded him in executing Gods judgements upon *Ahabs* posterity, but not doing uprightly what God commanded him, in that formality as God commanded him; but if *ye be mine, and will hearken to my voice, take ye the heads of your Masters Sons, and come to me to Jezreel to morrow by this time*, and then instead of pitying so great a calamity upon so many young Princes, insulting over them, he in derision saies to the people, *Ye be righteous: behold I conspired against my Master and slew him, but who slew all these?* hence it was that God said, *I will avenge the blood of Jezreel upon the house of Jehu*, say Interpreters: But it was a virtue in *David* to forbear the killing of *Saul*, whenas he could have done it, and was promised by God to be King after him; and in *Jehodajah* to preserve *Joash*, although by danger of his life. It was not virtue in *Amnon* to abstain from the company of *Tamar*, whenas he hated her because he had abused her; but it was in *Joseph* that he refused to accompany his Mistress, whenas he might have securely enjoyed her. Nor is it any virtue for any man to do, or forbear any thing for feare of punishment, for so horses, dogs, and other irrational creatures, will do or not do many things for feare of stripes, which are commanded or forbidden by their Masters. Nor is it any virtue in a Judg to pronounce true judgment if he be hired thereunto by any reward, or bribe. Where therefore neither worldly pleasure, profit, love, feare, hate, nor any sublunary thing, (but it may be loss to all these) do not move a man to the doing or not doing of what in conscience he ought to do or forbear; there nothing less then Gods grace and power in such a man, can be the true and efficient cause of such an action.

Gods Grace only is the true and efficient cause of virtue in men

2 Kings 10.6.

Verf. 9.

Hofea. 1.4.

6. It is a most admirable thing to consider how (notwithstanding all the various natures, dispositions, and events of things) this one Providence, foresees and provides for all created things in the whole universe, until she brings them all to their designed end. Nor does this providence foresee and provide for all things from an eternal, and fatal decree impelling all actions of all creatures. For then there could be no such thing as good, or bad men,

Why only Man can do virtuous Actions.



men, but God were the efficient cause of vice, as well as virtue in men, but by a mean foresight or knowledg. does often determin necessary effects from contingent causes. Which does not only plainly appear from very many places of Scripture, as that the men of *Keilah* would have delivered *David* if he had not escaped thence; that God would have destroyed *Niniveh* within forty daies, if the men had not repented; that God would have gathered the children of *Jersalem* together as a Hen gathereth her Chickens, but they would not; that if the mighty works had been done in *Tire* and *Sidon*, which were done in *Chorazin*, they had repented in dust and ashes, &c. but also all Gods promises and cursings upon men do depend upon their obedience, or disobedience to what he commands. And however this rigid opinion of Fate, and the eternal determination of all things be asserted by the Stoicks; yet do not I think that the most wicked man that ever was, did ever attribute any wicked action to any such cause; but pretended conscience, pleasure, profit, or his own will (never Gods.) It is true indeed that God hath made man in flesh and blood, and so prone to desire many things which he ought not: But though diverse men do naturally affect and desire things they ought not; yet God hath so made every man a free Lord of all his actions, that there is no man but may chuse whether he will do, or not any thing to the attaining of his appetitions and affections. And mans excellency above other creatures consists in this, that his actions are not determined by his objects, as other creatures are; but he may freely do this action, as it is moved in him from the appetition of pleasure, profit, pride, &c. or abstain from it as he apprehends it forbidden by him who may forbid: And so may any man freely do or endeavor to do any thing which he ought to do, though to his temporal disadvantage, (but this having no Temporal motive, must proceed from Gods grace) which no creature upon earth can do but only man; only man therefore can do virtuous actions.

## CHAP. III.

## Of Judgment.

- What is Judgment. 1. Judgment is the definitive of him who by right commands, permits, or forbids a thing, either by himself or instrument, whether any thing be done conformable to a Law commanding, permitting, or forbidding it.
- How it differs from a Law. 2. Herein judgment differs from a Law. A Law is the declared will of him who by right commands, permits, or forbids a thing, together with a penalty annexed for not observance, after some reasonable time fixt whereby the obliged may take notice of such declaration. Judgment is the sentence of him who so commands, forbids, or permits, whether such an act were an omission or transgression of any Law so declared.
- How Judgment differs from Justice. 3. Justice is the upright doing of any just or legal action, conformable to the Law of him who by right commands: Judgment is the discerning of a good or bad action.

4. All

4. All judgment must necessarily be the act of three persons at least, *viz.* the Judge, the accuser, and the party accused, or as we say, the Judge, the Plaintiff, and Defendant. What persons are necessary in Judgment.

5. The end or *ratio finalis* of Judgment, is either to determine differences, or punish offenders. The end of Judgment.

## CHAP. IV.

## Of Equity.

1. **E**quity is twofold, either a remission or moderation of the Laws when the execution of Laws will rather kill then cure a distemper in the Subject; as when many Subjects either upon passion, or being seduced, have so far transgressed Laws, that they have forfeited by Law their lives and estates; yet in such case are not supream powers rigidly to exact all which the Law gives them, but it is equity so to punish the principal Authors, and other Subjects, that others may be deterred from the like, and the generality offending, preserved. So where the Law commands upon penalty, and it becomes impossible for the Subject to perform, (as it ever was, and will be) there it is equity to remit the penalty. Where therefore the Law obliges a Tenant to pay his Landlord such a Rent, yet if by inundation of waters, sterility of the season, &c. it comes to pass that the Tenant by no fault of his, either cannot, or it will be the ruine of himself and family, to pay it, there it is equity in the Landlord to remit, or moderate what by Law he might justly exact. How manifold is Equity.

Or secondly, a supplement of the Law in cases wherein things in conscience ought to be done, yet for want of some formalities, or niceties they cannot in strictness of Law be exacted.

2. Equity is, when with a sincere intention, men (although it be to their prejudice) endeavor to please God. Judgment, a giving sentence according to Laws. How Equity differs from Judgment.

3. In Courts of Judicature, the Judges proceed according to the declared Laws, and ought not in judgment to vary or swerve from them, but proceed as they are impowred by Law and their Commission; and Laws are made usually *ad terrorem*, rather to affright men, then to punish all offenders; which Laws were they not moderated, it were impossible for all men to subsist under the burden of them; nor is there any man but has need of Gods mercy, and the Kings. Courts of Equity therefore are as necessary, as Judicial. The necessity of Courts of Equity.



## The Contents of the Fifth Book.

**H**AVING before treated of the Causes of all Regal and Ecclesiastical power; and having in the last Chapter of the Third Book treated of the Laws and Civil Government of this Nation, being the exercise of Regal power in reference to the publick preservation of Peace and Society in it: In this First Chap. we shall treat how far Ecclesiastical power has been exercised in this Nation, and by whom; Whether originally the Britanick and English-Saxon Churches were free, or subject to the Papal power, quoad exercitium: And whether as well before the Conquest, as after, the Kings of this Nation were not Nursing Fathers to the Church of Christ? And whether always before the Conquest, the Royal Government did not extend as well to the Persons, as Possessions of Ecclesiastical persons? And whether all Bishopricks were not originally of the Kings foundation?

In the reciting the Ecclesiastical Laws made by the Kings and Queens of this Realm, we shall observe three periods, viz. The Ecclesiastical Laws made by the Kings of England before the Conquest; The Laws made by the Conqueror and subsequent Kings, until Henry the Eighth; And lastly, the Laws made by him, and the Kings and Queens after him, until the end of King Charles his Reign.

Note (good Reader) that in the reciting of these Laws, I do not affirm that these Laws made by the Kings of this Realm, did never intrude upon that Ghostly power which our Saviour by Divine positive institution left only to his Church; and therefore make no construction upon them, but only when they are recited and objected as Authorities against that Power. My designe is to shew, (having already demonstrated, that by the Law of Nature, the persons of all Subjects born in the dominion of rightful Kings, are their natural Subjects; which is an indelible character, and can never be washed out; and therefore Subjects being Ecclesiastical persons, cannot free them from it; And that all priviledges and endowments which Ecclesiastical persons enjoy besides their ghostly power, is created by the King:) That the exercise of the Kings power over the persons and possessions of Ecclesiastics, as also Laws made by them for the order and preservation of the extern peace of the Church, is no new thing, as hath been by some objected.

THE



# THE FIFTH BOOK.

## CHAP. I.

*How far the Kings, Popes, and Bishops of England have exercised their Spiritual Jurisdiction in England before Henry the Eighth.*



I cannot, sure, be reasonably denied by any man, but that Ignorance is the mother of all Error; nor is any man better in any kind whatsoever, for being innurtured or ignorant: We daily see no where more feuds and dissensions, then among ignorant and mean men; which, were there not Laws to decide their difference, would be endless, and Mankind left in a worse condition then any other creatures. Not is Education and Learning any cause of

*Apology.*

*If learning or knowledge were the cause of dissensions or distractions, how then comes it to pass that all dissensions are determined by learned and knowing men, or else they would be endless?*

the dissensions and debates which arise among learned, and better educated men; but some internal cause proceeding from pride, or some other appetitions or affection in them. And though Education and Learning does not totally alter mens natures from bad to good, yet does it soften mens manners, and makes them not to be so brutish as those who are destitute of Learning and Civil breeding: For,

— *Didicisse fideliter Artes,  
Emollit mores, nec finit esse feros.*

Dd

Is



Exod. 32.

It is true indeed, that in that state in which God hath placed all men here, they do not see all things truly; but men are, and always were, and will be subject to humane error and frailty; and in many things (notwithstanding all the arts and helps which can be devised) men will never be reconciled. But that men should therefore condemn all Science and Learning, is like to a man that, if he sees and hears not all things distinctly and clearly, (although it may be he sees and hears well enough to do things which are necessary for his conservation) that therefore he will put out his eyes, and have his ears always stopped. Nor shall ever ignorance of any mans duty, totally excuse him for his not observance of Laws, be they Divine or Humane: Nor shall the blind belief of Subjects in their Superiors, whether Ecclesiastical or Temporal, ever totally excuse them from those things which are due, and they believe that they owe to God. I am not so very a *Hobbian*, as to believe that it is impossible for Supreme powers to command any thing contrary to the Law of Nature; nor yet so very a *Papalian*, as to think that the Pope is infallible: Especially since it is evident, that *Aarons* joining with the people in their idolatry, did not excuse the *Israelites* of old; nor did the command of both King and Priests ever under the Old Law excuse the subject *Israelites* from Gods judgments upon them for their idolatry. Nor is this very opinion of them in the Church of *Rome*, of the Popes infallibility, believed by themselves, however urged against others who are not of her communion: For then were not only General Councils supervacaneous and useless things, but also there could be no difference among them which is superior, a Pope, or General Council. Nor do they less deny it in their practice, then their opinion: For when *Sixtus Quintus* had excommunicated (9 Sept. 1585.) the King of *Navar* and Prince of *Conde*, and as he affirmed, made them incapable of succession to the French Monarchy; yet were most part of the French troubled at it, doubting the Priviledges of the Gallic Church would be trodden under foot, (which they needed not have doubted or feared, if they had believed the Pope to have been infallible;) and all the Parliament of *Paris* (who were all of the Church of *Rome*) desired the King, *Henry* the Third, to have the Bull torne in pieces, as you may read, *Davila* 575. And the Parliaments of *Chalons* and *Tours* did not only decree the Bull of *Gregory* 14. to the Prelates and Catholiques of the Kings party, (under pain of Excommunication, of being deprived of their Dignities and Benefices, and of being used as Hereticks and Sectaries, that within a certain time they should withdraw themselves from those places that yielded obedience to *Henry* of *Bourbon*, and from the union and fellowship of his Faction) to be publikely burnt; but it was so far rejected and scorned by the very Prelates and all other Catholiques of the Kings party, that it did extreemly confirm them all in the Kings obedience, being before unsetled and inclining to the Cardinal of *Bourbons* faction; as you may read more at large in the Twelfth book of *Davila's* History.

But it may be they will say, That this was not in matter of Faith, and that the Popes infallibility is affixed to Faith. Yet this can be no objection by those men, who ascribe all infallibility to the Pope, and that all his Acts and Decrees are to be received and obeyed, by an implicate faith, as Divine oracles. Well, but suppose these determinations of the Pope were not concerning matters of Faith, (as no doubt they were not) then how comes the

the Pope, because he is infallible in the Faith, that he takes upon him to be Judge and Determiner of those things, which no ways appertain to it, but are as much where Christianity is not planted, as where it is.

Yet it will be objected, *That if the Church be not Judge of what conduceth to the peace and safety of the Kingdom and Church, then who shall? and so farewell to all Government, and peace in Church or State.*

But before I answer this *Quære*, I would be resolved one Question, or two: Who shall be Judge whether the Pope, or a General Council be superior? Who shall judge whether in any Determination of the Popes, it be concerning matter of Faith or not? or whether it be determined *in Controversie* or not? In the many Schismes of the Papacy, who should judge who was the true Pope? or who shall judge whether *Alexander* the tenth be now the true Pope? or who ever gave the Cardinals (who were an humane institution many hundred years after our Saviour) this power of Election of the Pope, that whosoever they should so elect should be universal Bishop, and *St. Peters* successor?

Although I might justly insist hereupon, nor can these things upon these mens principles, who maintain the Popes infallibility, (at least in my understanding) be solved; and so are they, for all their boast of unity among themselves in as much confusion and dissention even in their very principles, as other men; yet am not I ashamed to give an account of my obedience both to my Church and King.

I say, that God hath made man a sociable, intellectual, and reasonable creature, and endued him with an immortal soule potentially capable of eternal happiness. Nor will God be served by man, having so made him, only by a base servile feare, and without the intellectual and rational faculties of the soule, and therefore has engraven by nature in the heart of every man, certain rules by which he is to direct his actions, which are the first principles and foundations upon which I honor my Parents, King, and them who are set over me for my direction, in order to my eternal good. And although that out of the Church, and not being preserved by humane Laws, I can neither hope for safety in this world, nor salvation in the world to come; yet who he is, from whom all humane Laws are derived, or what is the Church in which I must hope for salvation, there is no visible Judge under Heaven, but only mens consciences to direct them, *viz.* those directions which God either by nature has given to men, or revealed supernaturally in the Scriptures. Nor does a mans conscience thus informed, leave him after it be informed who it is from whom he ought to expect protection, and to whom he owes his obedience, as well spirituall as temporal; for though there be no visible means for men to hope for peace in Church or State, yet does it not follow, that by all men, all things which may be commanded for the Laws of the Church and State, are to be observed as the Laws of Church and State; as if the Church command men to worship Images, or any creature for the Creator (which under the old Law it many times did, nor do I understand how it can be excused in the Church of *Rome*) or if men be commanded by higher powers, immoral things, as to dishonor them, or their Parents; or whereas temporal powers command things plainly derogatory to the ghostly power of the Church; or the Church commands things contrary to the duty men owe to their King and Country, which we daily see both the one, and the other do, which makes some men in their passion ultimately resolve their Temporal



and Ecclesiastical obedience into the Church; others into the secular power: and many deny all obedience to either, and set up themselves, or something else in stead of either. But though mens affections carrie them severall waies, yet ought not all reason therefore and conscience to forsake all men; for although I ought not to judge either King, or Church, if they command any thing they ought nor, yet have I and every man else a conscience to direct them whether I ought to do all things whatsoever commanded by King or Church. Nor ought men to be frighted out of their consciences, viz. the Law of God by nature informing them, or his Law supernaturally revealed, by his grace directing them, because a perverse company of Schismatical and seditious men, have abused all Temporal and Ecclesiastical Laws and Powers, by pretending conscience. Nor will a blind obedience in all things to the Church of *Rome* cause unity and peace among Christians, although it be so much magnified by them: for let any man read the lives of *H. 4. 5. 6. and 7.* and *Frederick 1. and 2.* Emperors, when as the whole Empire was of the *Roman* Catholick Religion, and see if ever greater broyles were in the Christian World, and let them judge whether Obedience to the Popes by so great a part of the Empire, were not the cause of them: or whether all the Wars in Christendom caused by *Boniface* the eight, and *Julius* the second, were not against Christians in the communion and form of the Church of *Rome*:

But where secular or ecclesiastical Laws do plainly command things, not plainly derogatory to Gods Law, (for where they do, God is in all things to be obeyed before man) so as it is doubtful whether they do repugne Gods Law or not, then certainly the best way is to submit to them; for a mans conscience wrong informed does not excuse him from any Article of his duty; and if it may be the Laws do repugne Gods Law, it may be they do not; and in controverted and doubtful cases, the Law is alwaies presumed to be on the Governors part. Nor shall any mans conscience ever excuse him, if the Laws either of Church or Country do command things repugnant to Gods word; from the duty and obedience he owes to them in all things, where they do not repugne it. Nor does it free any man from his subjection to higher power, but where he cannot submit, he ought to suffer. And no question that where two evils unavoidable happen, the least is to be taken; as if a man in the communion of the Church of *Rome*, be reduced to that necessity of simply conforming himself to all things used in the Church of *Rome*, although his conscience cannot digest many things, or be excluded out of the visible Church of Christ, he had better be of such a Church, than of none at all.

Sure God never affixt such infallibility to men how great or good soever, that simple and blind obedience should be alwaies given to their Laws; as if there were neither Laws of God, or any to whom they were given, intellectual or reasonable creatures. And though no man ought to censure, much less to reproach the actions of his superior, yet are no mens actions so censured, as great mens, and so much the more by how much the greater they are: for,

*luxenat.*

*Omne animi vitium, tanto conspectus in se  
Crimen habet, quanto major quod peccat habetur.*

And if *Sabinianus* were so malicious a detractor from the works of *St. Gregory*; if *Bonifacius* the eighth used such undue means for the attaining the Papacy; if *Gregory* the seventh were so wicked as the Council of *Brixia* makes him; if *Alexander* the sixth were so wicked a man as *Platina* makes him; if so many decrees of the antecedent Popes have been abrogated by the subsequent Popes; if *Marcellinus* burned Incense to Idols; if *Liberius* consented to the *Arrians*, and gave his suffrage to the condemnation of *St. Athanasius*; if *Honorius* were condemned for a Monothelite by the sixth general Council; if *John 22.* were condemned by the Divines of *Paris* for teaching that the soules of the just shall not see God untill the general resurrection; then is it not possible, but that either contradictions are no contradictions, but the same things, or the Popes have not alwaies been infallible. But it is more then time to return to the question.

1. That *St. Paul* did preach the Gospel here in *England*, is affirmed by *Theodo. lib. 9. de curandis Græcorum affectibus: Paulum è priori captivitate Roma dimissum, Britannii & aliis in Occidente Evangelium predicasse.* And *Nicephorus* saies that *Simon Zelotes Doctrinam Evangelii ad Occidentaliū oceanum insulasque Britannicas perferet.* But that ever a Christian Church was planted in this Island, before that at the request of King *Lucius* ( in the reign of *Commodus*, and not of *Marcus Aurelius*, and *Lucius Verus*, as *Beda* saies ) *Elutherius* sent *Fugatius* and *Damianus*, I do no where find; for not only the superstition of the *Druides* was publicly professed, but after that a Christian Church was planted, *Lucius* converted the three *Archiflamines* of *London*, *York*, and *Carlton* into *Archbishopricks*, and the other *Flamines* into *Bishopricks*. Yet that ever after the Bishop of *Rome* did claim any power or jurisdiction of these *British* Churches, I no where find; nay the contrary is very probable; for they not only adhered in the observation of *Easter* to the Eastern Church, from *St. Johns* observation thereof at *Ephesus*, and not according to the determination of *Pius*, *Anicetus*, and *Soter* Bishops of *Rome*; but also the *British* Bishops when *Augustine* was sent by *St. Gregory* to preach, and convert the English *Saxons* to Christianity, did refuse to acknowledg any superiority from him, nor by any perswasion or command of him would, or could leave their ancient usages without consent of their fellowes, as a man may see in *Beda*. Nor were these Bishops in those daies ever esteemed ( nay not by *Beda* himself, as much a reverencer as he was of the Church of *Rome* ) Hereticks, or Schismaticks, and out of the Pall of the Church, &c. but right Catholick and godly men.

By whom Christian Faith was first preached, and a Church planted in Britain. Lib. 2. cap. 40.

*Platina in vita St. Elutherii.*

*Beda lib. 2. cap. 2.*

*Lib. 2. cap. 2.*

*Lib. 2. cap. 2.*

2. That the English *Saxons* after they had driven the ancient *Britains* not only out of all that part of *Britain*, which is now called *England*, some into *Britaigne* in *France* called *Britania Armerica* ( from whence it is supposed that Conntrey took its denomination ) others into *Wales*; but also Christianity it self; and themselves continued *Pagan* untill they first received the Faith by the preaching of *Augustine*, and *Mileus* sent by *Gregory* the great; is consonant to all the Histories of the Church, nor does to see appear any colour of Reason, or Authority to the contrary.

The conversion of the English Saxons, by the Pope Gregory the great.

3. But that *St. Gregory* did not at that time arrogate to himself the Title either of universal Bishop, head of the Catholick Church, or any superiority over Temporal Princes, is as clear as if it were written with a sun-beam. For in the contest between *St. Gregory*, and *John Fejwator* Bishop of *Constantinople* about superiority, universal Bishop and head of the Church,

Neither *St. Gregory* nor any of his predecessors did assume the title of head of the Church.



Epist. 80.

lib. 6. ep. 188.

lib. 6. ep. 194.

Neither S.  
Gregory nor  
his predeces-  
sors did claim  
superiority  
over Tempo-  
ral Princes.

Greg. ad Maur.  
Aug. lib. 3.  
ep. 61.

lib. 2. ep. 61.

Church. Gregory says in his Epistle to *Mauritius*, *Nullus Romanorum Pontificum hoc singularitatis nomen assumpsit; nullus Prædecessorum meorum hoc tam profano vocabulo uti consensit*: None of all the Bishops of Rome ever took upon him this name of singularity (*viz.* of Universal Bishop) none of my Predecessors would ever use this prophane stile. *Et universa Ecclesia corrui, quando is qui appellatur universalis cadit*: The whole Church falleth, when he which is called Universal Bishop, falleth. *Et nos hunc honorem oblatum nolumus recipere*: We would not accept of this honor offered unto us. And in his Epistle to *Fohn* claiming to himself this title; he says, *Tu quid Christo universalis ecclesia capiti, in extremi iudicii disturus es examine, qui cuncta ejus membra tibi met conaris Universalis appellatione supponere?* What answer wilt thou make to Christ the Head of the universal Church, at the trial of the last Judgment, which thus by the name of Universal Bishop seekest to make all his members subject unto thee? And unto *Anastasius* Bishop of *Antioch* he writes, *Ut de honoris vestri injuria taceam, si unus episcopus vocatur universalis, universa ecclesia corrui; si unus, universus cadit*: Not to speak of the injury done to your honor, if one Bishop be called universal, then if that one universal Bishop goes down, the whole Church falleth. And afterward, *Vos eandem causam nullam dicere non debetis, quia si hanc aequanimiter portamus, universa ecclesia fidem corrumpimus*: Ye ought not to say, it is a business of no importance; for if we patiently abide these things, we destroy the faith of the whole Church. And comparing the pride of this Name with the pride of Antichrist, he says, *Nunquid non! cum se Antichristus veniens Deum dixerit, frivolum valde erit? sed tamen nimis perniciosum. Si quantitatem vocis attendimus, dua sunt syllaba; si pondus iniquitatis, universa perniciēs*. And lib. 4. ep. 33. he says, *In isto scelesto vocabulo consentire, nihil aliud est quam fidem perdere*: To consent to this wicked Name, is nothing else but to lose the Faith. This and much more you may read in lib. 4. ep. 80. & ep. 99. and in S. Gregory's epist. to *Eulogius* Patriarch of *Alexandria*. Howbeit *Boniface* the Third, within less then three years after the death of S. Gregory, did assume the title of Universal Bishop and Head of the Church, but rather by the donation of *Phocas* (who had no more right to give it, then the Parliament had to give *Henry* the Eighth the Head of the Church of *England*, nor had *Phocas* any colour of title to the Empire) and have continued it ever since.

4. S. Gregory in his 76. Epistle to the Emperor *Maurice*, says, *Nunquid ego in hac re, piissime Domine, propriam causam defendo?* Do I herein defend mine own cause, O gracious Lord? And, *Dominus meus fuisti, quando adhuc Dominus omnium non eras: ecce per me servum ultimum suum, & vestrum, respondebit Christus*: You were then my Lord, when you were not Lord of all (*viz.* the Empire) behold, Christ himself shall answer by me who am his, and your meanest servant. And when the Emperor *Maurice* had made a law, That no Soldier should turn Monk, until his warfare were ended; Gregory disliked the law, and gave the Emperor this sense of it: *Ego quidem missioni subjectus eandem legem per diversas terrarum partes transmittō, & quia lex ipsa omnipotenti Deo minime concordat, ecce per suggestionis meæ paginam dominis nuntiavi; utrobique ergo quæ debui exolvere, quæ & Imperatori obedientiam præbui, & pro Deo quid sensi, minime tæni*: I being subject to your command, have transmitted your Law to be published through divers parts of the world; And because the Law it self is not pleasing to Almighty God,

God, I have represented my opinion thereof to my Lords; wherefore I have performed my duty on both sides, in yielding obedience to the Emperor, and not concealing what I thought for God. And Boniface the First sent an humble supplication to Honorius, desiring him by his authority to provide some remedy against the ambitious contention of the Clergy concerning the Bishoprick of Rome. The Emperor Honorius at his request established a law, That none should be made Bishop of Rome through ambition, charging all Ecclesiastical Ministers to cease from ambition; appointing moreover, that if two were elected, neither of them should be taken, but the election to proceed further to another to be chosen by a full consent of voices, as it is expressed *dist. 79. cap. Si duo*. If then S. Gregory himself were so zealous an opposer of Universal Bishop and Head of the Church, and to that purpose introduced that sentence of *Servus servorum Dei*, to deter all subsequent Bishops of Rome from such arrogance: And if S. Gregory did acknowledge himself so humble a Subject to Maurice; and that Boniface the First did petition Honorius by his authority to provide against the irregularities in the very election of the Bishop of Rome, (there was no such thing in these days as Cardinals, and the Election of the Pope in the Conclave) then sure in the days of S. Gregory and before, neither did the Popes assume this title of Head of the Church, nor a power of disposing and transferring Kingdoms at their pleasure. But, *affirmanti incumbit probatio*; and let any man that affirms either, prove either.

*Dist. 92. cap. Eccle. cap. Vidor.*

5. That above one half of what is now called Britain, did retain the Christian faith, notwithstanding the persecution of the Saxons, is sufficiently evident, if we consider Scotland and Wales, which always retained Christianity since it was first planted. Nor were the very Saxons themselves utterly destitute of Christianity: For, Berta the wife of Ethelbert King of Kent, and daughter to the French King, was tolerated to observe the rites of Christian religion with Bishop Luidhard; and this was before that S. Gregory was excited, or inspired to undertake to preach to the English Saxons. It is true, that Ethelbert after his own conversion did endeavor to have planted the Christian faith both in the Kingdoms of Northumberland and the East-Angles, with fair hopes of good success for a season; but it took not effect; for within a short time both Kings and Kingdoms forsook their Religion, and apostated from Christ. The Kingdoms of the West-Saxons and of the South-Saxons, under Kingils their King (who did unite the Heptarchy into a Monarchy) were converted by the preaching of Berinus an Italian, by the persuasions of Oswald King of Northumberland. Oswald King of Northumberland was baptized in Scotland, and Religion luckily planted in that Kingdom by Aidan a Scottish Bishop. Penda King of Mercia was converted, and Christened by Finan Successor of Aidan, by means of a Marriage with a Christian Princess of the Royal family of Northumberland. Sigibert King of the East-Angles, in whose days, and by whose means Religion took root among the East-Saxons, was converted and Christened in France.

Though S. Gregory were the first, yet was he not the only Converter of the English Saxons.

*Seld. Ana. Anglo-Brit. lib. 2. cap. 2. pag. 62.*

*Speed in the Kings of the West-Saxons, an. 611. Bede lib. 3. cap. 4. 5. Idem lib. 3. cap. 21. Speed in the Kings of the East-Angles, an. 636.*

6. No sooner was the name of Christ preached, but the English presently with such fervent devotion and zeale consecrated themselves unto Christ, that they took incredible pains in propagating Christianity, in celebrating Divine service, performing all functions and duties of piety, building Churches, and endowing them with rich livings, so that there was not another

The zeal of our Ancestors upon their conversion.



another Region in Christendom that could make reckoning of more Monasteries richly endowed; yea, and divers Kings there were, that preferred a religious and Monastical life, before their Crown and Kingdom. So that many holy men also this Land brought forth, which for their firm profession of Christian Religion, constant perseverance therein, and sincere piety, were canonized Saints, that it gave place to no Christian Province in this behalf: And like as *Britain* was called by *Porphyry*, a plenteous province of Tyrants; so *England* may be truly named, a most fruitful Island of Saints. *Camb. Brit: tit. Angl. Sax.*

The Popes universal power was not received under the English Saxon Kings before the Conquest.

pag. 60.

Spelm. concil. an. 705.

pag. 62.

All Bishopricks were of the Kings foundation originally, and donative.

When they became eligible, and by what power.

7. The Bishop of *Derry* in his book of the Just vindication of the Church of *England*, pag. 57. does affirm, that not any of the petite *Saxon* Kings or their Subjects, though some of them indebted to *S. Gregory* for their Conversion, and all of them much weakened by their sevenfold division, (for at first there was of seven Kings but only one who was a Christian, namely the King of *Kent*; neither was it any of his progeny who afterward did unite the Heptarchy into a Monarchy) much less that any of the succeeding Kings of *England*, or of *Great Britain*, did ever make any solemn, formal, or obliging acknowledgment of their submission to the Church of *Rome*. But on the contrary, when *Austin* first arrived in *England*, he stayed in the Island of *Thanet* until he knew the Kings pleasure, and offered not to preach in *Kent*, until he had the Kings licence to preach throughout his Dominions, &c. Neither was there any Appellant, from the Conversion of the English, (he says) to *Rome*, until *Wilfrid* Archbishop of *York*, who notwithstanding that he gained Sentence upon Sentence at *Rome* in his favor, and notwithstanding that the Pope did send express Nuntio's into *England* on purpose to see the Sentence executed, yet could he not obtain his restitution, or benefit of his Sentence, for six years during the reigns of *Egbert*, and *Alfred* his son: yea, *Alfred* told the Popes Nuntio's expressly, That he honored them as his Parents for their grave lives and honorable aspects, but he could not give any assent to their Legation; because it was against reason, that a person twice condemned by the whole Council of the English, should be restored upon the Popes Letter. And after he says, That after *Alfred* and *Theodore* were both dead, (*Theodore* was the Archbishop of *York*, that opposed *Wilfrids* Donation from the Pope, and continued it so long as he lived) we find the Sentence of the Pope, and *Wilfrids* Restitution still opposed by the surviving Bishops in *Alfreds* Sons reign, &c. Neither were there any Appeals to *Rome* from that time until after the Conquest, in the reign of *Henry* the First, by *Anselm* Archbishop of *Canterbury*.

8. See *Comment. Lit. sect. 648. pag. 344.* where it appears by our books and divers Acts of Parliament, that at first all the Bishopricks in *England* were of the Kings foundation, and Donative, *per traditionem baculi* (i. e. the Crozier, which was the Pastoral staff, & *annuli*, the ring whereby he was married to the Church. King *Henry* the First being requested by the Bishop of *Rome* to make them elective, refused it: But King *Fohn* by his Charter bearing date *quinto Junii, anno decimo septimo*, granted that the Bishopricks should be eligible. So that all Bishopricks were not only at first of the Kings foundation, and Donative, but afterwards became eligible from no other cause but the Kings Charter.

That

9. That the sacred character of Priesthood does not free men from the subjection due to the Laws of their Prince and Country, is not only evident by many examples in Sacred Writ, and by almost infinite precepts and examples of Gospel, and holy Martyrs in primitive times, but also by a concurrent consent of all Histories where Christianity hath been planted; And that these powers have been justly exercised by the Kings of England before the Conquest, among the many Laws of Ina, Withred, Alfred, Edward, Athelstan, Edmund, Edgar, Athelred, Canutus, and Edward, take these of Canutus.

The Kings of England before the Conquest did exercise their Regal power over all persons in all cases.

*Si quis sacra tenens pejerasse convictus fuerit, ei manus praeclitor, ni dimidiatam sui capitis astimationem domino, atque episcopoenderit: neque vero deinceps qui juret dignus putandus est, nisi quidem Deo cumulatè satisfecerit, atque ab ejusmodi in posterum nefario scelere abstinenti fidejussores admoverit.* If any in Holy orders be convict of Perjury, let him be branded on the hand, unless he shall pay to the King and Bishop half the price of his head: Neither shall he afterward be esteemed worthy to take an Oath, unless he shall have abundantly satisfied God, and shall have given Sureties that afterward he shall abstain from such wickedness.

Lambert  
Saxon laws,  
lex 33. f. 113.

*Si quis eorum qui ara deservierint, alicui mortem obtulerit, omni cum divini, tum humani juris patrocinio excludatur: nisi quidem cum exilio cumulatè id sceleris compensarit, atque casti etiam cognatis satisfecerit, aut saltem (una cum hominibus qui jurent idoneis) omnem criminis suspicionem diluerit. Hanc vero qua Deo & hominibus debetur compensationem, intra ter denos (idque cum fortunarum suarum omnium discrimine) dies aggreditor.* If any one who serves at the Altar, shall kill any man, let him be excluded from the protection of Divine and Humane laws, unless with his banishment he may abundantly satisfy that wickedness, and shall also give satisfaction to the kindred of him who is killed, or at least (together with sufficient men who shall give their oaths) shall wash away all suspicion of the crime. And let him go in hand to make this compensation which is due to God and men, within thirty days, (and that upon the forfeiture of all his fortunes.)

lex 36. 114.

Law-gager.

*Si eorum qui ara deservierint aliquis hominem occiderit, aut insigne aliquod perpetrarit flagitium, gradu & honore dispoliat, proinde atque ei Papa circumscriptis habitandi locum, exalato, ac cumulatè compensato. Sin is crimen fuerit inficiatus, excusatio tripla esto. Atque in hanc qua Deo & hominibus debetur compensationem, intra ter denos aggrediatur dies, ab omni legis commoditate destitutus habetor.* If any one who serves at the Altar, shall kill a man, or commit any foul offence, despoiled of his honor, let him be banished the place of his habitation, and make abundant satisfaction, yea though the Pope make it void. But if he deny the crime, let his excuse be threefold; and if within thirty days he does not endeavor to give this satisfaction which is due to God and man, let him be outlawed.

lex 38. ibid.

*Si quis sacris inauguratus, rei capitalis obnoxius extiterit, comprehensor, atque ut tandem episcopo criminis admissi penas deponat, asservator.* If any one in Holy orders be guilty of any capital crime, let him be apprehended and safely kept, until he be punished by the Bishop for the crime committed.

lex 40. 115.

*Si quis sacrum ordinem, atque vivendi formulam commutarit, pro ipsa ordinis dignitate, sive capitis astimatione, multa, legis violata pana, sive rebus suis omnibus compensato.* If any one shall change his holy order and form of

lex 46. 116.

E c

living,



living, for the dignity of the order or price of the head, let him be fined for punishment of the violation of the Law, or forfeit all he hath.

Law 37.  
fol. 114.

But how far this good Prince was from having any spite to Holy Orders, or men separated to the Worship of God and Service at the Holy Altar; he does enact, *Siquis sacris initiatus, incolare in iis qua ad fortunas vitæve ejus spectarint decipiatur, tum ei rex (ni is aliunde habuerit) loco Patroni, & cognatorum esto. Fraudator vero Regi (prout ipsa feret facti ratio) satisfacito, aut graves sceleris admissi penas rex ipse repetito: Christiana siquidem fide imbuti regis est, Deo illatas graviter (pro facti ratione) ulcisci injurias.* If any one entered into Holy Orders, or one living with him be imposed upon, or cheated in those things which belong to his estate or life, then let the King himself (unless he can procure it otherwise) be to him in place of Patron and Kindred; but the Cheator shall make the King satisfaction (according to the value of the fact) or the King himself shall take great punishment of the wickedness committed; for it is the part of a King endued with Christian religion, severely to punish injuries (according to the quality of the deed) offered to God.

The ancient  
Common-law  
did not ad-  
mit of Ap-  
peals to  
Rome in cases  
Spiritual.

10. For the proving of this, Sir Edward Coke in the Proeme to the sixth Part of his Reports, cites an Act of Parliament made 10 H. 2. an. 1164. where it was enacted: "As concerning Appellations, if any shall arise from the Archdeacon, they must proceed to the Bishop, from the Bishop to the Archbishop; and if the Archbishop do fail in doing Justice, it must lastly come to the King, that by his precept the controversie may be ended in the Archbishops Court, so that there ought not to be any proceeding further without the assent of the King. And that this among many other might not taste of innovation, the Record saith, This recognition or record was made of a certain part of the customs and liberties of the Predecessors of the King, to wit, of Henry his Grandfather, and of other Kings, which ought to be observed in the Kingdom, and held of all for the diffentions and discords often arising between the Clergy, and our Sovereign Lord the Kings Justicers, and the Peers of the Realm: And all the Archbishops, Bishops, Abbots, Priors, Clergy, with the Earls, Barons, and all the Nobles &c. have sworne, and assuredly promised in the word of mouth, in one consent, to keep and observe the said recognition toward the King and his heirs in good sooth, without evil meaning for ever.

The Kings  
before the  
Conquest, by  
their own au-  
thority did  
impose Taxes  
upon Church-  
lands.

11. The Revenue of *Danegelt* was first enacted because of Pyrates: For, infesting the Country, they did persist as much as they could to the devastation of it; And to repress their insolence, the yearly return of *Danegelt* was enacted, viz. Twelve pence for every Hide of all the Country, (Mr. Selden in lib. 2. cap. 4. *Analecton Anglobritannicon*, fol. 77. makes a Hide of land to be as much as could be tilled by one plough in a year. Mr. Lambert in the Laws of King Edward, fol. 128. makes a Hide to be one hundred acres of land) to maintain them who should resist the irruption of the Pyrates, when they met them. But from the *Danegelt* every Church should be free and quiet, and all land which was in the dominion of the Church, wheresoever it lay, paying nothing at all in such redemption; for men did more confide in the prayers of the Church, then in the defence of arms. But if *Lex vult non supervacaneum*, then is it clear that the Church-lands were liable to be taxed by the King; for it had been a supervacaneous thing to have excepted the lands of the Church in this Law, if the lands of the Church,

Church had not been liable to have been taxed at all. And to manifest more clearly, that the exemption of Church-land from Taxes, was a meer concession of our Kings; take the Stat. of *Ethelulph* the successor of *Egbert*, written with his own hand. *Our Lord reigning for ever! Whilst that we see perillous times in our days, the fire of war, the taking away of our goods, together with the cruel depredations of our destroying enemies and barbarous Pagan nations do lie upon us, the multiplied tribulations do afflict us even to utter destruction: Wherefore I Ethelulph King of the West-Saxons, with the counsel of the Bishops and my Princes giving wholsome counsel, and the only remedy, have consented, I have determined that every portion given to the holy Church, whether of either Sex serving God, or to miserable Lay-men always the tenth Mansion where it is least, or the tenth part of all Goods, be made for ever free, that it be safe and defended from all secular services, yea from the Kings greater or lesser tributes, or the taxations which we call Winterden; and that it be free of all things for the forgiveness of our souls and sins, to serve God alone, without Expedition, building of Bridge, and fortifying of Castle.*

*Analekt. Angl.  
lib. 2. cap. 4.  
pag. 77.*

12. If King *Ethelbert* were obliged to *S. Gregory* for the Conversion of the English Saxons to the Faith, Prince *Edgar Athelin* was finally beholding to Pope *Alexander 2.* For, *Edgar* being Grandson to *Edmund Ironside*, and the undoubted Heir to the English Monarchy after the death of *Edward the Confessor*; *Alexander* not only allows the Conquerors pretensions to the Crown of *England*, but interdicts all those who should oppose him. So that though *Harold* were an Usurper; yet was his Holiness his Interdiction as much against the undoubted Title of *Edgar*, as against *Harold*: Nor were all titles of rights and interests of the English Monarchy ever perfect and compleat from that time, until they were all united and perfected in King *James*.

At what time the Pope first usurped jurisdiction over the Crown of *England*.

*Speed fol. 409.  
par. 27.  
See the effects of the Popes curse, Speed fol. 415. par. 2.*

13. How far the *Britanick Churches* were from any dependence upon the Church of *Rome*, we have already shewed: And so free were the Churches of *England* under the *Saxon Kings* before the Conquest, that before the Appeal of *Anselm* Archbishop of *Canterbury* to Pope *Paschal 2.* scarce any Appeal was ever made to *Rome*, but that of *Wilfreds*, which was overruled by the King and Church. So that for near a thousand years after the Conversion of the *Britains* and *Saxons* to the Faith, although by means of *S. Eleutherius* and *Gregory the Great*; we do not find any thing which may prove the superiority of the *Roman Church* over either the *Britanick* or *English*. And how strange a thing the investiture of the English Bishops by the Pope, was to the King and Kingdom of *England*, appears by the Letter of *Paschal* to *Anselm*, in answer to *Anselm's*; *Significasti Reges & Regni Majores admiratione promotos, &c.* You have signified to me, that Kings and Nobles were moved with admiration, that the Pall was offered to you by our Ministers, upon condition that you should take an Oath which they brought you written from us. And the King not only opposed this Popes Letter, but pleaded the Fundamental Laws and Customs of the Land: *Consuetudo regni mei est a patre meo instituta, ut nullius prater licentiam Regis appelletur Papa; qui consuetudines regni mei tollit, potestatem quoque & coronam Regis violat*: It is a Custom of my Kingdom instituted by my Father, that no man may appeal to the Pope without the Kings licence; He that takes away the Customs of my Kingdom, doth violate the Power and Crown of the King. And these Laws were no other then the Laws of the Confessor,

At what time the first contest hapned between the King & Pope about the investiture of Bishops.

*De Eleth. Pot.  
cap. 4.*



Legations as  
rare as Ap-  
peals before  
the Conquest.

The Pope and  
all the Eng-  
lish Hierarchy  
conspire with  
Stephen a-  
gainst Maud  
the undoubt-  
ed Heir of  
Henry the first.

The second  
contest be-  
tween the  
King and  
Pope, and  
from what  
cause.

The quarrel  
between King  
John and the  
Pope.

with the old *Saxon* Laws; but also in the execution of these things, the Bishops of *England* adhered to the King and Laws, and denied their suffrage to their Primate, as you may read in the Bishop of *Derry* a Vindication of the Church of *England*, p. 63, 64. After pag. 65, the instances out of Sir *Hen. Spelman*, that *Gregory* Bishop of *Osium*, the Popes Legate, did confess that he was the first Roman Priest that was sent into these parts of *Britain*, from the time of *Austin*; and that those Legates were no other, then ordinary Messengers or Ambassadors sent from one Neighbour to another: Such a thing as *Legatine Court*, or a *Nuncio's Court*, was not known in the *British* world, and long after.

15. See *Speed* in the Life of *Stephen*, para. 4, where *Stephen* having entred his Government in the year of our Lord 1135, the 21 of December, and was crowned at *Westminster* the 26, of the same moneth, being *Stephen's* day, by *William Corbel* the Archbishop of *Canterbury*, who with the rest of the Bishops doing him homage, and knowing now he would yield to any conditions, (for performance whereof his brother the Bishop of *Winchester* did there engage himself for a Pledge) they all took their Oath of Allegiance conditionally (traiterously I might say) to obey him as their King, so long as he should preserve their Liberties, and the vigor of Discipline. And that the Lay-Barons made use also of this policy, appeareth by *Robert* Earl of *Gloucester*, who sware to be true Liegeman to the King, as long as the King would preserve to him his dignity, and keep all covenants, &c. And having buried the body of *Henry* the First, he went to *Oxford*, where he acknowledged he attained the Crown by Election only, and that the Pope *Innocentius* confirmed the same.

16. The next contest, which after *Anselm* happened between the King and the Pope, was caused by *Tho. Becket* Archbishop of *Canterbury*. For, *Stephen* the Usurper having made a Law, whereby the Temporal Judges might not meddle with Ecclesiastical persons; *Henry* the Second, upon many disorders committed by the Clergy, did repeal this Law, and restored the antient Laws of this Realm (commonly called *Avia leges*) whereby the persons of Priests were not exempted from being judged by the Temporal Judges: And though the Archbishop sware to observe the Laws restored by the King, yet was he absolved by Pope *Alexander 3.* Nor could the Archbishop ever after be brought to conform to the Laws called *Avia leges*; which was the cause of his assassination, and of great trouble to the King and Realm. And whether this man did deserve to be canonized for his stubborn disobedience to the Laws of his Country, which no ways concerned Faith, but only Civil and Temporal obedience, and those not new neither, but a restitution of the antient Laws, let any man judge.

17. The first occasion of the quarrel between King *John* and *Innocent* the Third, was: *Hubert* the Archbishop of *Canterbury* being dead, the Monks of *S. Augustine* in that City, elected without any licence of the King, one *Rainold*, and took an oath of him to go to *Rome* and take his investiture from the Pope. The King incensed hereat, caused *John Gray* to be chosen, and desired the Pope to ratifie this last choice: The Pope notwithstanding confirms the former: The King hereupon grows angry, and divers of the Monks, against their own act, refuse to accept him. The Pope (although *Rainold* were chosen by the Monks, and confirmed by the Pope) adviseth

advised the Monks to choose *Stephen Langton*, the Monks do so; the King is highly exasperated, and forbids all Appeals to *Rome*, and did asseverate that he had Bishops, Prelates, Nobles and Magistrates of his own, who could (according to the Laws of the Land) decide and determine all Controversies which should arise in Church or Commonweal. The Pope insisted upon the election of the Cardinal, (*Stephen Langton* was Cardinal of *Chisseyne*) and required the King not only to give him the quiet possession of the See, but also to recall all such Monks as were exiled, and to restore them to their Goods which were seized on by the King for the last choice, and for default to interdict him and the whole Realm. The King is so far from obeying, that he seized upon the Lands and Goods of those Bishops to whom the Pope had (forsooth) given the power of Interdiction. The Pope constant in his resolutions, by *Pandulphus* and *Durant* interdicts the King and Kingdom, and gives it the French King. King *John* driven into a great strait, gives his Crown and Kingdom to the Pope; he good man had before given it to the French King *Philip* the second, surnamed *Aufassin*; and his son *Lewis* had gotten such footing in *England*; that he would not be gotten out. The Pope interdicts both father and son, but his curses took not such place that they would give over what they had gotten by the first grant; nor did these troubles end, until the English Nation uniting themselves under *Henry* 3. did by plain force drive *Lewis* out of *England*; to such an insufferable height was the Papacy grown in those days.

18. Although the stubborn Barons made *Henry* 3. swear to observe the Ordinances made in the Mad Parliament at *Oxford*; and the Archbishop of *Canterbury* and nine other Bishops did denounce a Curse against all those, who either by direction, arms or otherwise should withstand the Ordinance of the Twelve Peers, which gave the exercise of all Regality to them; yet did the Pope absolve him from it very easily. *Addit. Matth. Park 996.*

The Bishops in H. 2 his reign, conspire against him.

19. How zealous the most noble Prince *Edward* the first was in the cause of Christianity, and how observant of the Papal power, is evident by his victorious Voyage into Holy Land: But he afterwards became hated by the Churchmen, both in respect of the Statute of *Mortmain* made in the fourth year of his Reign, and also because that (by the advice of *William Marchyall* his chiefest Treasurer) he seized into his hands the Plate, Jewels, and Treasure of the Churches and Religious Houses within the Realm, and compelled the Clergy to give him the one half of one years value of all their Ecclesiastical promotions and dignities. But such was the felicity of this Prince, that neither Pope nor Clergy durst openly oppugne him; but in the 27. year of his Reign, at the request of *Boniface* 8. says *Martin*, he set *John Baliol* (adjudged by *Edward* before King of *Scotland*) at liberty: And having conquered *Scotland* in the 33. year of his Reign, *Robert Bruce* procured an Instrument from the Pope, that the Kingdom of *Scotland* was holden of the Church of *Rome*, and therefore required the King to desist from the prosecution of his Wars there: But how little King *Edward* regarded this Instrument, and what answer he returned to the Pope, you may read in our English Chronicles; nor do I finde that ever more prosecution was made by the Pope in this Kings life-time.

Contests between the Pope and Ed. 2.

20. From this time until *Henry* the Eighth, the Kings of *England* and the

In the reign of Hen. 4.



the Popes kept so good correspondence, that they never went so far as Excommunication or Interdiction on the Popes part; and how far the Kings did restrain the Popes jurisdiction in their several reigns, after the Conquest, shall be shewed in *Chap. 3.* Yet I cannot pass over one thing of the whole Hierarchy of the Church of *England* (except only the Bishop of *Carlisle*) who all factiously and traiterously conspired, or adhered to *Henry* the Fourth his unjust Usurpation, and Deposition of their Sovereign *Richard* the Second.

## CHAP. II.

### *Of Ecclesiastical Laws made by the Saxon and Danish Kings before the Conquest.*

*Inas* began to reign in the year of Christ 712 died 727.  
\*Counsellors, Earls.

**I***Inas* by Gods gift King of the *West-Saxons*, by the advice and instruction of *Genredes* my Father, and *Heddes* my Bishop, and *Eorcenwoldes* my Bishop, and with all my\* Ealdermen, and them of best birth of the Wiseſt of my people, and eke in a great Assembly of Gods Servants, did religiously study as well for the health of my ſoul, as for the common profit of our Kingdom, that right Laws of Marriage, and juſt Judgment be firmly eſtabliſhed through every folk; and that hereafter it ſhall not be lawful for any Ealderman, or any under our rule, to make void theſe our Doooms or Judgments.

Cap. 1.

#### *Of the Rule of Gods Servants.*

First we command that Gods Servants have a right rule of living: After that we command all folk to obſerve theſe Laws and Doooms, or Judgments.

Cap. 2.

#### *Of Children.*

A Child ſhall be baptized within thirty days after it be born; if that be not done, let thirty ſhillings be forfeited: If that it die before it be baptized, he ſhall forfeit all he hath.

Cap. 3.

#### *Of working upon Sunday.*

If a Slave work on Sunday by his Maſters command, let him be free and the Maſter ſhall pay thirty ſhillings: But if the Servant did his work without command of his Maſter, beat his hide, or make him to fear a hide-beating. If a Free ſervant do any work without his Maſters bidding, let him forfeit his freedom, or ſixty ſhillings; and a Prieſt double ſo much.

Cap. 4.

#### *Of Firſt-fruits.*

Firſt-fruits ſhall be paid upon the Maſs of *S. Martin*; he who ſhall not then pay them, ſhall forfeit forty ſhillings, and pay twelvefold the value of the fruits.

of

*Of Church-Privilege, or Sanctuary.*

Cap. 3.

If any man guilty of death, flee to the Church, let his life be spared, and let right be done to him: And if any man deserving stripes, implores help of the Church, let him be remitted his stripes.

*Of Fighting.*

Cap. 4.

If a man strike in the Kings house, he shall forfeit all he hath; and let it depend upon the Kings judgment, whether he shall lose his life. If one strike in a \*Minster, he shall pay one hundred and twenty shillings, &c. \*Cathedral Church.

*Of First fruits.*

Cap. 5.

Every man shall pay First-fruits for the Roof and Hearth, where he shall be upon the day of the birth of our Saviour.

*Of the killing of Godfather or Godson.*

Cap. 7.

If any one shall slay his Godson, or his Godfather, he shall compensate so much to his next of kin, as the compensation due to his Lord had been: And this payment to the value of him which is killed, shall be increased or lessened, accordingly as the payment to the Lord for the Servant killed should have been performed. If it be the Kings Godson which is killed, he shall satisfy the King and his kindred; but if the next of kin kills him, he shall pay to the Godfather so much, as should have been paid to the Lord for the slaughter of his Servant. If he be a Bishops son, he shall pay half so much.

*Ecclesiastical Laws made by King Alfred or Alured,  
who began to reign in the Year 871.*

*The Preface.*

GOD did speak these words to Moses, and thus said: I am the Lord thy God, I led thee out of Egypt land, and of the house of bondage; Thou shalt not choose other Gods before me.

Do not take my Name in idleness; for I will not hold him innocent, who on idleness taketh my Name. Remember thou keep holy the Seventh day; Do thy work on six days, and on the Seventh rest, thou and thy son and thy daughter, thy servant and handmaid, and thy work-cattel, and the stranger that is within thy door: For on six days Christ made heaven and earth, sea and all things thereon were created by him, and rested on the Seventh day, and therefore the Lord hallowed it. Honor thy Father and thy Mother, whom the Lord gave thee, that thou maist live long on earth: Thou shalt not kill. Thou shalt not steal. Thou shalt not commit adultery. Nor report false witness of thy neighbor; nor covet thou thy neighbors inheritance without right: Nor work golden gods, or silver. Thou shalt constitute these Judgments.

If a man buy a Christian man, he shall serve six years, the seventh let him be free without cost: With the same vestment he came in, with the same let him go out; if he have a wife, let her go out with him; if his Lord gave him his wife, she and her \*beams are the Lords. But if the servant \*Children, shall



shall say, I will not part from my Lord, nor from my wife, nor from my children, nor from my work; then let his Lord bring him to the door of the Temple, and there let him bore his ear with an eal, for a sign that ever after he is his servant. If any man sell his daughter for an handmaid, he shall not use her as an handmaid, he shall use her courteously, neither shall he sell her to other folk; and if she be negligent, let him be pacified, let him set her free to stranger folk; if he ally her to his son in marriage, let him give a garment, the reward of her modesty, and endow her; but if he will do none of these, let him set her free without price.

Note, *flea* is  
to strike, as  
well as kill.

If a man flea another willingly, he shall be slain himself; but if a man flea another not lurking or lying in wait, or unwillingly, or of necessity, so as he were given into his hand by God, let him flee to Sanctuary and save his life, and forfeit nothing. If a man of ambition and guile flea his neighbor, let him be taken from mine altar and be put to death. If a man flea his father or mother, he shall be put to death. If a man forestall a Freeman, and he sell him to another man, he shall be put to death. If a man revile his father or mother, he shall be put to death. If a man flea another with a stone, or with his fist, and yet he can go with a staff; get him a Physician, and let him do his work while he is impotent. If a man willingly flea his servant or his handmaid, so as he doth not die in a day, but live two or three nights, although he be guilty, let him be free, because they were his goods; but if he die the same day, let him be guilty. If a man by contention hurt a wife with child, let him repair the damage that shall be adjudged; if she die, he shall be put to death. If a man put out another's eye, let him lose his eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound with wound, skar with skar. If a man strike his servant or handmaid so as he loses an eye, let him be free therefore; or if he strike out a tooth, let him be free. If an ox gore any man or woman so as he die, let him be stoned and eat his flesh, and let the master of the ox be guiltless, if in two or three days he did not know that the ox gored a man: if he knew it, and yet would keep him, and the ox afterward kill a man or woman, let the ox be stoned, and the master either put to death, or pay that price which shall be imposed upon him for the life, be it son or daughter, the law is the same; if he be a servant or handmaid which is gored to death, let the ox be stoned, and thirty shillings be paid to the master. If a man dig a pit and shall leave it uncovered, he shall pay the value of any beast that falls into it and dies. If the ox of one gores the ox of another so as he dies, let the live ox be sold, and his price and the flesh of the dead one be given to the Lord; if after the ox wound another and he die, let him sell the ox, and give the price and the flesh of the ox that is killed to the Lord thereof. If the master knew the ox had gored another, and would not take warning nor sell him, he shall give two, and four sheep for one; if he hath not wherewith to pay, let him be sold for theft.

If a Thief break a mans house in the night, and there be slain, he shall not be guilty of manslaughter; but if it be after sunrise, he shall be guilty of manslaughter, if ready to be killed, he were not necessitated. If a man shall put fire into standing corn and burn it, the author shall give the value of the damage. If a man trust another with goods to keep, and he privily steal them, let him repay double; but if it be not found that he which was intrusted, used no deceit, let him be excused. If the thing intrusted

were

were a living creature, if he can bring witness that it was taken away by enemies, or that it is dead, he shall not repay; but if he cannot bring witness, nor free himself from guilt, let him swear he is not guilty. If a man corrupt a virgin unbetrothed, and slept with her, let him be fined, and take her to wife; but if her father will not so bestow her, let him pay her portion, after the value of virgins portion. Women Fortune-tellers, Charmers and Soothsayers, suffer not to live. He that hath had any thing to do with a beast, shall be put to death. He that offers sacrifice to any other Gods, shall suffer death. A stranger or inhabitant thou shalt not hurt, for thou wert a stranger in the land of Egypt. A widow or orphan do not oppress nor vex; if you shall oppress, and they complain, I will hear their prayers, and slea you with my sword, your wives shall be widows, children orphans. If thou lend money to thy acquaintance, be not a gainer from him, nor exact usury of him. If thou take the garment of one for a pledg, who hath only that for a covering, restore it before the sun set; but if he complain to me, I will hear him for my mercy. Do not speak evil of the Lord, nor curse him who is the Prince of the people. Pay thy Tithes, and thy first born and first-fruits give to God. Do not taste the flesh torn from beasts, but cast it to the dogs. Do not trust to a deceitful mans word, nor hearken to it as to obey it; nor favor him in judgment, nor esteem his witness but as a tale. Do not follow the ill counsel of the people, nor in controversie of right incline to the opinion of the multitude; nor do thou hold any thing common with wrong. If thou shalt find any fourfooted beast of thine adversary straying out of the way, reclaim him. Judge rightly; do not judge otherwise to the poor and adversary, then to the rich and friend. Do not tell a Lye. Do not slea the innocent and just. Do not take a gift, for it oftentimes blinds the eyes of the wise, and perverts the speech of the prudent. Do no injury to the stranger nor inhabitant. Do not take the names of other Gods in swearing, nor have them in thy mouth.

These are those Laws which the Almighty God himself did give to *Moses*, and commanded him to keep; and also the onely begotten Son of God, when he came into the World, openly taught, That he did not come down to destroy the Law, but to fulfil it with gentleness and goodness; for he delivered the rule of true Piety. After that, they nailed him to the Cross, before that his Apostles (were together, nor were scattered for preaching the Gospel) converted many Nations; and sent Apostles and Interpreters of the Scripture to *Antioch*, *Syria*, and *Cilicia*, to learn Christs Law; and what should then befall them, should by a Messenger be sent back to them in writing. This is that Epistle which the Apostles sent to all the people of *Antioch*, *Syria*, and *Cilicia*, which were converted from the bondage of the *Gentiles* to Christ.

The Apostles and Elder Brethren, wish health to you. As soon as we heard that certain men, which went from us, had troubled you with words, and commanded some things which they had not in command from us, and had made your souls sad, rather than instructed you with sound and wholesome Doctrine; it seemed good to us, being met together, to send to you *Barnabas* and *Paul*, who had ventured their life for the Name of Christ: With them we send *Judas* and *Silas*, who shall speak the same words. It seemed good to the Holy Ghost and us, not to impose more necessary burden, then these things upon you; That ye abstain from things offer-



ed to Idols, and Blood, and things strangled, and from fornication; and that ye will that which ye would other men should do to you. From this one Commandment it is manifest, That a man should restore every man his right, neither is there need of any other Law-book. This he should remember, who sits a Judge over other men, That he should not give that judgment upon other men, which he would not have given upon himself. After the Gospel of Christ was preached, many Nations, as also the English, by Faith joyned themselves to the Word of God: Some Bishops and other famous men, as well in *England*, as other Regions, held a Council of wise men; and these men, taught by Gods mercy, imposed upon every sinner a pecuniary mulct, and left the power of exacting it to the Magistrates, without any offence to God, having obtained leave; onely to the betrayer and forsaker of our Lord, they did not judge fit that this light punishment should be inflicted, because they deemed such a man not worthy to be spared, as well, because God would have such contemners of him unworthy of all mercy, as also, that Christ, Gods Son, would not have mercy on them that betrayed him to death; and he bid them to worship God before any other. They therefore, in many Synods, constituted punishments for all sins, and commanded them to be written.

These Laws have I *Alfred* the King gathered together, and commanded to be written, a good part whereof our Ancestors have religiously observed; there are also many things worthy to be observed of us with like Religion in this age; yet some there are which seem less profitable to us, by the advice of wise men I have altered, some I have made new: And because it may seem rashness for any one to command to be written more than his own Decrees; as also it would be an uncertain thing how they would be esteemed afterward, of which we make great account: Whatsoever are worthy to be observed in the acts of *Inas* my Kinsman, of *Offa* King of the *Mercians*, or *Ethelbert*, who was the first of *Englishmen* that was baptized, I have collected them all, and the other left: And in taking them, I *Alfred* King of the *West-Saxons* have used the counsel of the most wise men, and it hath pleased them all to judge them worthy to be kept.

Cap. 2.

*Of the Priviledge of the Church.*

If any man guilty of any crime, shall flee to a Religious house, if that belong not to the Farm of the King, or some Honorable family, let him there remain three nights, in which, let him heed his salvation (unless in the interim he return into favor: ) And if any one shall during that time weaken him with fear of stripes, bonds or wounds, let him be free as the custom of the Nation is, with the price of his head and with fine, and the damage of violation of the liberty of the Church, with One hundred and twenty shillings to boot.

Cap. 3.

*Of the Priviledge of Sanctuary.*

We do further grant this peace to every Church consecrated by a Bishop: If an enemy afflict another, and he implores help of the Temple, let him in seven days be taken out by no man; if for hunger he can live so long, and not opened his way by force: If a man does otherwise, let him be held a breaker of the King and Church, and also of a more grievous crime, if he shall have stoln any thing thence: If the Governor have more then ordinary occasion to use that place, provide for him in another house, which has not  
more

more doors then that which shuts the Church, and let the Governor take care that in the mean time he gets no meat; But if he will give his arms into the power of his adversaries, let them keep him safe thirty days, and then give him into the hands of his kindred. Also the freedom of the Church is, if any guilty man flee to the Church before he be accused, and there confess it in Gods name, he shall be remitted half of his mulct.

*Of Sacrilege.*

cap. 6.

If a man steal any thing in a Church, let him pay the value of the thing stolne, and that punishment belonging to that value, and that hand wherewith he stole be cut off; if he will redeem his hand, and it be granted him, let it be with the price of his head. If a man steal upon a Sunday, Christmas-day, Easter-day, Holy Thursday, or upon a Communion-day, let him pay double, as also in the Fast of *Lent*.

*Of them who steal money out of Churches.*

If any man shall take money out of a \*Minster without the Kings leave, \*Church: or the Bishops, he shall pay 120 shillings, half to the King, half to the Bishop and the Lord of the Church.

*Of the Fighting of Priests.*

21.

If a Priest slea any man, let all he has acquired be confiscate, and the Bishop degrade him, and let him be thrust out of the Church, unless the Lord of the house will forgive him the price of his head.

*Of him who binds himself to God, (or enters into Religion.)*

22.

If any other accuse a man entred into Religion (or bound to God) that he hath not performed something of those things which he has mentioned, let him give a Fore-oath in four Churches; and the other, if he will justifie himself, let him do it in twelve Churches.

*Of Fight.*

30.

This Chapter gives a Priviledge for the honor of the Church, in case of Manslaughter, to him who flees thither.

*Of Mass-Holidays.*

39.

All Freemen have freedom granted them on these Holidays; but not Servants. The twelve days in Christmas; the day on which Christ subdued the Devil, the Anniversary feast of *S. Gregory*, and seven days before Easter and seven days after, the Feast-days of *S. Peter* and *S. Paul*. In Autumn, the whole week which is before the Feast of *Mary*, the Feast-days of all Saints, and the four Wednesdays in Ember-weeks, let servants have all holy liberty given, and freedom, that they may spend all their endeavor upon the benefit of those things, which they have heretofore received in Gods name, or for whatsoever benefit he shall hereafter earn.



## The League of King Edovard and Guthrun.

## Preface.

**T**Hese are the institutions of King *Alfred* and King *Guthrun*; and then King *Edovard* and King *Guthrun* made in those very times, when the *Danes* and *English* made league, and bound themselves, that those things which are afterward recited, should be often amplified and increased to the common benefit of the Realm.

Before all things, they propounded one God to be devoutly and holily worshiped, and that there should be no Heathen worship, &c.

Cap. 1.

Therefore they first decree, that the peace of the Church be kept within the walls holily and inviolably, and also that tranquillity which is delivered into the Kings hand.

2.

Furthermore, if any man shall renounce the Christian faith, so as by words or deeds he advance the Heathen worship, he shall forfeit the price of his head, or the punishment of the Law according to the offence.

3.

If a man entred Religion (or bound to God by promise) steal, or fight, or forswear, or commit adultery, he shall forfeit the price of his head, or suffer punishment for transgressing of the Law, according to the nature of the crime; at least he shall satisfie God according to the rules of the Church, and be cast into prison if he cannot find Sureties. If a Priest upon Feasting-days or Fasting-days shall go astray, if it be among *Englishmen*, let him be fined thirty shillings; but if it happen among the *Danes*, let him pay half a mark. If a Mass-priest upon appointed days provide not Oil, or deny Baptism, as the use is; among the *English* let him be fined, and with the *Danes* the breach of the Law is twelve \* Oran. If any man of Religion commit any thing worthy of death, let him be taken and held to the Bishops judgment.

\* Quare the  
value of an  
Oran.

4.

## Of Incest.

Furthermore it seemed good to the wise men, that of men guilty of Incest, the King shall have the higher, and the Bishop the lower, unless he shall abundantly make recompence to God and men, and shall perform what is enjoined them by the Bishop. If two brethren, or two of the same alliance, commit fornication with the same wife, let them be fined the value of their head, or be punished for the transgression of the Law according as is meet, and as the crime deserves.

5.

If a man condemned to death, desires ingenuously to confess his sins to a Priest, let it be granted him: And let all men Gods laws so follow, that they obtain Gods mercy, and be acquitted of wise men.

6.

If a *Dane* pay not his Tythes, let him undergo the punishment of the breach of the Law; let an *Englishman* be fined. If a *Dane* withhold what is due to *Rome*, let him be punished for the breach of the Law; let an *Englishman* be fined. If any *Dane* pay not to the Candles, let him be punished for breach of the Law; let an *Englishman* be fined. If a *Dane* shall not pay the just Alms of the Plough, let him be punished for breach of the Law; let an *Englishman* be fined. If a *Dane* shall suppress or retain any  
Divine

rulþæl  
myrran.

Divine Laws or Duties, let him be punished for breach of the Law; let an *Englishman* be fined. If any man wilfully wound another offering Divine service, let him be guilty of death; but if he shall die, let him be outlawed, and all Ministers of Justice apprehend him, hurt, or unwilling: And if it were his fault that he was stricken, or did against Gods law, or resisted the King, if a man so flatter himself, let him be without recompence; or as we say, *he has the means in his own hands.*

*Of working on Holidays.*

If a *Dane* sell any thing upon Sunday, let him forfeit the thing and twelve Ora's, an *Englishman* thirty shillings. If a Freeman do any work upon an Holiday, let him forfeit his freedom, or be fined and punished for breach of the Law; let a Servant be beaten, or be made to fear being beaten. If a *Dane* shall make his Servant work upon a Holiday, let him be punished for breach of the Law; and an *Englishman* be fined.

*Laws Ecclesiastical made by King Æthelstan,*

*Who began to reign in the year of our Lord 924.*

**I** Æthelstan King, by the prudent counsel of Wulfhelmes mine Archbishop and other my Bishops, command all Governors that are in my Government, in the name of God and all his Saints, and for their good will towards them, that before all things they pay just Tythes, as well out of our property, as the duties of living creatures and fruits of the earth; and that all Bishops, Ealdermen and Sheriffs do the same thing: And I will that my Bishops and Sheriffs, who sit in judgment upon other men, that they observe this rule, and that they finish all these things upon the day we have appointed, *viz.* the Anniversary of S. John Baptist beheaded.

Further when we think with our self, what the most excellent Father Jacob said to God, *I will offer my tythes, and a peace-offering to thee;* and what the Lord spake in the Gospel, *To the all-having man shall be given, and he shall abound:* We moreover may think on those things, which are so terribly written in this very book; *If you will not pay your tythes, giving us only the tenth part, the nine parts shall be taken from you.* Also we are admonished that Heavenly things are more excellent then Earthly, and eternal things then our frail bodies. Whosoever therefore ye hear what the Lord commands, and what we ought to follow, those things only I would have you to do, which you can justly and lawfully prepare.

*Of Church-breaking.*

And we command concerning Church-breaking, if he be a man of the threefold \*Ordal, let him give satisfaction as is rehearsed in the Judgment-book.

*Of them willing to undergo the Ordal.*

If any man will undergo the Ordal, then let him come three days before the Mals-priest hallow it, and feed himself with bread and salt, and water and

Cap. 9.  
Concerning  
the Ordal, see  
Verleg. an. &  
Seld. annal.  
Anglo lib. 2.  
cap. 8. and  
Lamberts pref.  
Saxon laws.  
Cap. 23.



The trial of the Ordal, was either to be soufed over head and ears in cold water, or to thrust his hand a cubit deep into boiling hot water, or to go barefoot, or hold a burning hot iron in the Triers hand: If they neither shak'd the rope to be pulled out of the water, nor burned, nor scalded their hands or feet, they were acquitted.

\* zong  
dagaj.

and worts, before he go to Trial, and let him go to Mass every day and offer his gift; and upon the day he shall undergo the Ordal, let him take the Eucharist, and swear that he is innocent and knows nothing of the wickedness whereof he is accused. If it be of cold Water that the Question made, let him be plunged over head and ears half an ell in the water; but if it be of Iron, let him hold it three days before he put it out of his hand. And the Accuser shall proceed to follow the oath he made before, and both shall fast by the command of God and the Bishop; and let there be on neither side above twelve men; but if the Accused comes with more then twelve men, then unless they will depart, let the Ordals be void.

And upon each Friday, let every one of Gods Ministers in every Church sing the 50. Psalm, for the King, and for all that will as he willeth, and for all other who deserve well of him. If a man accuse another of any crime, let him make him recompence, unless he did it upon \* Procession-days; and if he do so afterward, let it be as before it was.

### *Ecclesiastical Laws made by King Edmund,*

*Who began to reign in the Year 940.*

**E**dmond the King, in the Solemn Feast of *Easter*, gathered to London a great company as well of Ecclesiasticks; as of the People. There was *Oda* and *Wulstan* Archbishops, and many other Bishops, that they might as well take care for the health of their own souls, as for the souls of them committed to their charge.

Cap. I.

#### *Of the Man who hath vowed Chastity.*

First, they who are entred into Religion, and who should give Gods people an example of virtue to imitate, according to their Order, be they Men or Women, let them live chaste: But if they shall not do it, then let the Canon punish them, that is, let them forfeit all they have in the world; and if they mend not their manners, not be buried in the Sanctuary.

2.

#### *Of Tythes and Church-sco.*

Every Christian which shall not pay his Tythes, his First-fruits, and his Alms, let him be accursed.

4.

#### *Of him who shall deflowre a Nun, or commit Adultery.*

If a man shall carnally know a Nun, let him be as if he had killed a man, or be denied Burial in the Sanctuary; and let the same Law be to him who commits Adultery.

5.

#### *Of Re-edifying the Church.*

We will that every Bishop at his own costs shall repair the House of God, and also minde the King, that all Gods Houses be well adorned; which thing is very behooful.

6.

#### *Of men Perjured, and worshiping Heathen Gods.*

They who are Perjured, and offer Heathenish sacrifice, shall be forever shut out from things pertaining to God, unless they soon repent and mend their manners.

of

*Ecclesiastical Laws made by King Eadgar,**Who began to reign in the year of our Lord 959.*

**T**He Laws which Eadgar the King, in a great Assembly, ordained to the glory of God, the ornament of himself, and the profit of all his Nation.

First let the Church of God enjoy all its rights and immunities, and let every man pay his Tythes to each Church to which he is subject; whether it be of Plow-land, or Inland; of men of free condition, or lands of Villains.

*Of Church-tribute.*

If a man of free condition hath a Church upon his freehold, which hath a place of Burial belonging to it, let him bestow one third part of his Tithes upon the Church; but if there be no place of Burial about the Church, let the Lord of the ground give to the Priest of the nine parts, what he will. And let the Church-tribute of every Church be paid out of the lands of all Freemen.

*Of Tithes.*

And let every one pay tithes of young living creatures, before Pentecost; and the tithes of the fruits of the earth, before the \* Equinox; and Church-tribute, at the feast of S. Martin. If any one shall not pay, let him incur the punishment expressed in the Doom-book: And if any one shall not pay his tithes as we have set down, then may the Kings Sheriff, and the Bishop, and the Mass-priest of the Church meet, and take the tenth part due to the Church, and return the ninth part back again to him without thanks; as to the other eight parts, let the Lord have one half, the Bishop the other. Let this be, though he be the Kings man, or of free condition.

\* Sure it is meant the Autumnal Equinox; for no tithes can be renewed before the Vernal.

*Of the Hearth-penny.*

And let the Hearth-penny be paid before the Feast of S. Peter; and if it then be not paid, let him carry that penny and thirty pence more to Rome, and confirm by a certain Certificate in writing, that he did detain it; and let him pay over and above one hundred and twenty shillings to the King. If afterward a man shall not pay it, and carry the penny and thirty pence to Rome, he shall pay two hundred shillings to the King; but if he shall make default the third time, he shall forfeit all he hath.

*Of Festival, and Fasting-days.*

Let every Sunday be held a Feasting-day, from noontide of Saturday until the twilight of Munday; he which will not celebrate it, let him undergo the penalty in the Judgment-book; and other Feast-days shall be bidden; and let all Fasting-days be held with all godliness.

*Canons*



*Canons set forth under King Edgar.*

**T**Hese things which follow, belong to the Constitutions of King *Edgar*, concerning the Manner of Life of Men ordained to Gods service.

1. We teach, that the Minister of God do zealously serve and minister to God, and intercede to God for all Christian people; and that every one of them be faithful and obedient to their Superiors, and unanimous in common necessity, affording help to one another before God and men, and that they be firm and faithful to their Secular Lords.

2. And we teach, that every one give another honor, and that the younger do religiously pay love and obedience to the elder, and that the elder do diligently instruct the younger.

3. And we teach, that at every Synod, every year be had Books and Vestiments agreeable to the service of God; and Ink and Parchment to write their Constitutions, and moreover a Three-days assembly.

4. And we teach, that every Priest coming to the Synod have his Clerk, and man fed at his hand or faithful in service, and none unknown, or given to folly; and let them all come together in the faith and love of God almighty.

5. We also teach, that if any ill happen to a Priest, or any one do him wrong, it be referred to the Synod; and let all take it as offered to them all, and bring help that reparation may be made according to the will of the Bishop.

6. And we teach, that the Priest make known to the Synod, if any in his Parish be found contumacious against God, or who does nourish any grievous sin; and that he is not able, or dares not produce him to amendment for fear of the world.

7. And we teach, that among Priests there be no strifes and wrangling; nor let them be deferred to the Secular power; but let them be composed among themselves, or if need be, put off to the Bishop.

8. And we teach, no Priest whether consecrate at *Benedict*, shall forsake his Church at his own will, but have it for his rightful wife.

9. We also teach, that no Priest meddle with those things which belong to another Priest, whether in his Church or Parish, or acquaintance or fraternity, nor in any other thing belonging to him.

10. And we teach, that no Priest take away the Scholar of another, not having first asked leave of him to whom he belonged.

11. And we teach, that every Priest diligently learn to increase the learning of Handicraft trades.

12. And we teach, that every learned Priest does not despise an half-learned Priest; but as much as in him lies, endeavour to make him more learned.

13. And we teach, that no Priest well descended, does lightly esteem a Priest meanly descended; for to a man rightly judging, all men are of the same stock.

14. And we teach, that every Priest behave himself so, that he be not a Merchant without right, nor use merchandise.

15. And

15. And we teach, that every Priest administer Baptism as soon as he shall be required; and that they admonish all within their Parish, that they have a care that all their Infants be baptized within thirty seven nights, and that none does too long defer to be confirmed of the Bishop.

16. And we teach, that all Priests do with all diligence promote the Christian religion, and by all their strength blot out the superstition of the Gentiles; and we do forbid feigned Will-worship, Negromancy, Divinations, Witchcrafts, Divine worship of men, and those things which lead mortal men into divers errors; and in þæt ȝylottum ȝon eþenun, and of divers other Trees, Stones, and the Phantasie of divers things which deceive men, which ought not.

17. And we teach, that every Christian man take care that his children be christened, and learn them their *Pater-noster* and *Creed*.

18. And we teach, that on Festival days every one abstain from the prophane Verses and Songs of the Gentiles, and from Devilish Plays.

19. And we teach, that every one abstain from fabulous and foolish readings, and from filthy and blasphemous idle talk.

20. And we teach, that upon Sunday every one abstain from merchandise, and popular meetings.

21. And we teach, that every one abstain from the company of Harlots, and embrace his right wife.

22. And we teach, that every one learn his *Pater-noster* and *Creed*, before he be buried in a consecrated Churchyard, or be accounted fit to receive the Eucharist; and that he be unworthy the name of Christian, that will not learn these things, nor suffer other men in Baptism to be washed with holy water, nor in confirmation admit of the hands of the Bishop, but all that he could avoided them.

23. And we teach, that upon Festival and Fasting-days, there be no extraordinary contentions among men.

24. And we teach, that upon Festival and Fasting days there be no administration of Oaths, or the Ordale.

25. And we teach, that upon Festival and Fasting times every man forbear to accompany his wife.

26. And we teach, that Priests keep their Churches with all worthiness in Divine Ministry, and to pure service, and to nothing else; and that they suffer not any thing more, nor any thing less, neither within, nor near it. Let there be no vain speech, nor any thing indecently done: This is not a place of inordinate drinking, nor of any manner of vanity; Neither may a Dog come into the Church-yard, nor more Hogs then a man can rule.

27. And we teach, that no man repose any thing in the Church, which may be there held uncomely.

28. And we teach, that in the Churches Vigils every one behave himself modestly, and diligently betake himself to prayer, and not given to drinking or luxury.

29. And we teach, that no man be buried in the Church, who by a good life did not please God, and thence be judged worthy of such sepulture.

30. And we teach, that no Priest celebrate Mass in any house, which is not a consecrated Church, unless it be for the extreme sickness of any one.

31. And we teach, that no Priest do at any time celebrate Mass, unless it be upon a consecrated Altar.



32. And we teach, that a Priest never celebrate Mass without book, and that he have the Canon before his eyes, unless something hinder it.

33. And we teach, that every Priest celebrating Mass, hath his Corporal, and Submle under his Alban, and all his Missal vestments, as is meet, duly woven.

34. And we teach, that every Priest be very careful to have a good book, or at least faithfully corrected.

35. And we teach, that no Mass-priest celebrate Mass alone, lest he should want them who might answer.

36. And we teach, that no man receive the Eucharist but fasting, unless it be in dangerous sickness.

37. And we teach, that no Priest celebrate Mass above thrice at most in one day.

38. And we teach, that the Priest always hath (as is meet) the Eucharist prepared, and that he keep it in cleanness, and be very careful that it does not wax old: But if it be longer kept then is meet, so that it grows nauseous, then let it be burnt with pure fire, and be put under the altar, and let him who is guilty of the offence ask God forgiveness.

39. And we teach, that not at any time the Priest be so rash, that he celebrates Mass, unless he has all things pertaining to the Eucharist, *viz.* Pure oblation, pure wine, and pure water. Wo to them who begin Mass, if any of these be wanting; and wo to him who uncleanly hath prepared any thing to this purpose; he is like those Jews who mingled vinegar and gall, and afterward in scorn offered it to Christ.

40. And we teach, that at no time a Priest is worthy to celebrate Mass, who hath not received the Eucharist; neither in Sacred orders may he consecrate another, who is not consecrate himself.

41. And we teach, that every Cup in which the Eucharist is consecrated be Futil, and that it be never be consecrated in wood.

42. And we teach, that all things about the Altar and belonging to the Church be very clean and worthy, and that nothing unworthy be brought hither, but what is holy may be worthily reposed; and let a light always burn in the Church whilst Mass is singing.

43. And we teach, that no man neglect any thing which is consecrated, *viz.* Holy water, Salt, Frankincense, Bread, &c.

44. And we teach, that no woman approach the altar whilst Mass is celebrated.

45. And we teach, that no man ring the Bells but at the appointed times, and that every Priest then sing his hourly Song in the Church, and in the fear of God diligently invoke and poure out his prayers for all men.

46. And we teach, that neither Mass nor Parish-priest do come within the door of the Church, or any seat in it, without his Surplice, nor to any office at the altar, without his designed vesture.

47. And we teach, that no man ordained in Sacred Orders, nourish his hair, nor without cause permits himself to be shaven, if he hopes the blessing of God, and S. Peter, and ours.

48. And we teach, that upon Festival and Fasting-days, all Priests be unanimous, and set forth to the people the same things in one and the same manner, lest otherwise they might lead them into error.

49. And

49. And we teach, that every Fast be made more grateful by the distribution of alms; for, whosoever out of his devotion to God, diligently gives alms; without doubt he renders his Fast more pleasing to God.

50. And we teach, that Priests in the office of the Church do unanimously endeavour it, and that in every Church they deserve a like yearly stipend.

51. And we teach, that Priests diligently instruct youth, and draw them to learn arts, that afterwards they may have the aid of the Church.

52. And we teach, that Priests upon every Sunday preach to the people, and shew themselves an example of good life.

53. And we teach, that no Christian man eats blood of any kind. (*Litura est.*)

54. And we teach, that Priests instruct the people of these things which of right ought to be rendred to God, *viz.* Tythes and other things, among which that which is called the Alms of the Plough, within fifteen nights after *Easter*; the tithes of young living creatures, before *Whitsuntide*; the tithe of the Fruits of the earth, before the celebration of *All-Saints*; and \* *Ciricsetum*, *vel Primisium*, \* *Rome-money* at the feast of *S. Peter*; and \* *Ciricsetum* (*idem cum Ciricsetum*) \* *Peter-pence*, at the feast of *S. Martin*.

55. And we teach, that Priests so distribute the alms of the people, that they render God more merciful, and the people more disposed to alms.

56. And we teach, that Priests sing Psalms when they distribute the alms given, and exhort the poor that they diligently pray for the people which gave these alms.

57. And we teach, that Priests themselves avoid drunkenness, and be careful that it may be avoided by other men.

58. And we teach, that no Priest be either Poet or Stage-player, whether it be to please himself or other men; but that he so behave himself as is meet for his order, prudent, and worshipful.

59. And we teach, that Priests do not swear, and be careful to prevent it in others.

60. And we teach, that no Priest love the company of Women more then is meet, but that he love his own proper wife, that is the Church.

61. And we teach, that no Priest bears false witness, nor be of council with Thieves.

62. And we teach, that a Priest, besides his duty, never intangle himself with the Ordale, or Forein oaths.

63. And we teach, that in purgation a Priest swear not against a man of free condition, unless he of free condition swore before.

64. And we teach that a Priest be not a Hunter, nor Hawker, nor Drinker, but conversant with his Books, as becomes his order.

65. And we teach, that every Priest should teach Confession and Penance, and that men confessing their sins might also make satisfaction; and that as need requires, he administer the Eucharist, and the Unction, if it be desired: After death let it be carefully covered, and where the body is, let nothing vain or unseemly be permitted, but buried in the fear of God.

66. And we teach, that every Priest hath oil, as well to baptize infants, as to anoint the sick, and all other apparel due to their publick ministry; and by all means promote the Christian faith, here by well preaching, there



by shewing an example in well living. Then shall he so be enriched, that Almighty God may be merciful to him.

67. And we teach, that every Priest repeating his Chrism, doth not forget to tell what he should have done for the King & Bishop in his prayers.

*of Confession.*

1. When any one will make confession of his sins, let him do it manly and not blush to confess his sins and wickedness in accusing himself; because from thence comes indulgence, and because without confession there is no forgiveness; for confession heals, confession justifies.

*[Here is a great space in the original Manuscript.]*

O Lord, I beg that thy mercy may prevent this thy servant, that all his iniquities may suddenly be blotted out by Jesus Christ our Lord.

Hear, I beseech thee, O Lord, the prayers of the humble crying unto thee, I beseech thee O Lord.

2. This thing is to be seriously meditated by him who is constituted Physician for the souls of men, and that he should have known their actions, *viz.* that he may rightly discern them, and hold a right reason, in imposing censure upon every one of them. However the matter be, let not the Physician prejudge the Sinner, nor thrust him into desperation. When any one will confess his sins, first he shall hear him courteously what this his intention should be, and whether he would or could humbly confess those things he had committed, and search out all his guilt.

3. Ask him of his manners, and extort his guilt, and lay before him all those things he has done. But this keep always secret, that you may never in the same manner judge rich and poor, freemen and servants, those elder and those younger, the healthful and unhealthful, the humble and proud, the strong and weak, them in Gods service, and the secular.

A prudent Judge shall wisely distinguish concerning the fact, *viz.* What, how, where, and when it was committed: And though in no place or time sin is lawful, yet upon Festival and Fasting-days, and Festival places, every one ought more carefully to abstain from this. And by how much the greater, or of more dignity any one is, so much more grievously is every one to be corrected before God and man for his sins: For to the strong and feeble, a like burden is not to be imposed, nor upon one infirm as one healthful, but men must distinguish between them with a prudent moderation.

4. After these things, the Penitent may humbly arise to his confession, and first say, I believe in God the Father Almighty, Governor of all things, and in his Son, and in the Holy Ghost; and I believe there is life after death, and I believe I shall rise again in the day of Judgment; and I believe that I by the power of God and his mercy am worthy of all these things.

5. After these things, with a sorrowful mind he may humbly make his confession to his Confessor, and bowing his head may say in this manner: I confess to Almighty God, and Confessor my spiritual Physician, all the sins which ever I have committed by the pollution of Evil Spirits,

Spirits, whether in deed or thought, whether with men or women, or any other creature, whether by nature or against nature.

6. I confess my Gluttony morning and evening ; I confess all my avarice, envy and backbiting, and deceitful vice, lying and vain-boasting, vain speech, ungodly prodigality and haughtiness in every kind, which hath any ways happened to this unbridled body of mine : I confess I have often been the author of sin, the favorer of sin, conscious of sin, and teacher of sin.

7. I confess in my mind to have committed Murder, and Perjuries, and Seditious, and Pride, and neglect of all Gods commands. I confess all those things which I ever saw with mine eyes, either coveting, or unduly reproaching ; and also all those vain and superfluous things, which I have heard with mine ears, or spoke with my tongue.

8. I confess all sins of my body, of skin and flesh, and bones and nerves, and of kidnies and gristles, and of my tongue and lips, and of my jaws, and teeth, and hair ; of my marrow, and of every other thing which is soft or hard, wet or dry. I confess I have observed my Baptism worse then I have promised to my Lord, and the profession by which I was bound to keep for the praise of God and his Saints, and the eternal health of my self. I confess I have often neglected my Canonical hours, and have often forsworne the Life of God, and taken his Name in vain.

9. I ask and beseech my Lord for remission of all these, that the Devil may never by his snares prevail against me, lest at any time I should die without confession and amendment of my sins, even as to day I have confessed all my sins before our Lord and Saviour Christ, who governs heaven and earth, and before that Altar and those Reliques, and before my Confessor and Mass-priest of the Lord ; and as I have given a pure and true confession, and am ready to correct all my sins, and as much as in me lies, with all carefulness hereafter to avoid them.

10. And thou, O Jesu Christ my Saviour, have mercy upon my soul, and forgive, I pray, and blot out all my sins and transgressions, which I have ever either heretofore or lately committed ; and lead me into thy heavenly kingdom, that there I may be conversant with the Elect and thy Saints without end and for ever. Now I humbly beseech thee, O Priest of God, that thou be a witness for me in the day of Judgment, that the Devil hereafter may have no power over me, and that thou mayst be a pleader for me to the Lord, that I may amend my sins and transgressions, and desist from committing the like again. May God enable me to perform this, who liveth and reigneth without end in everlasting. *Amen.*

*The manner of injoining Penance.*

1. If an old man or young man, rich or poor man, sound or infirm, shall unwillingly offend another of any order, it shall not be so taken as if he had wilfully done it, or on set purpose : And also if any one compelled by necessity shall have committed any sin ; for this thing, because he did by necessity commit it, he shall always rather deserve forgiveness and milder censure.

2. Each Deed is to be carefully distinguished, for Gods and Mans sake.

*These*



*These Services are observed in Parts beyond Sea, viz.*

*Ashwednesday.* 3. That every Bishop take his Episcopal seat upon that Wednesday which is called the head of the \* Fast; and then let every one in his Diocese come unto him who is guilty of any grievous crime, and when he shall have confessed this, his Confessor shall teach him penance proportionable to the crime he is guilty of: And if any one be worthy of a more grievous sentence, he shall separate him from the communion of the Church; yet shall he grant and exhort him that he follow his necessary imployment, and so at length he may return home having obtained pardon.

4. And after that, upon *Maunday-Thursday*, let all be called together to the same place; and the Bishop singing over them some of the Hymns, pronounce absolution to them, and give them leave to return home with his benediction to them. This is to be observed of all Christians.

5. Yet ought the Priest diligently to enquire with what contrition, and with what perfection and plenitude every one hath fulfilled the penance enjoined him, and accordingly grant this remission.

6. If a Layman without cause kill another, let him fast seven years in bread and water, and four of them as his Confessor shall appoint, and also the seven years penance to boot, and alwaies bewail his sin all he can, because it is unknown to men how much his penance hath prevailed with God.

7. If a man desire to kill another, and cannot fulfil it, let him fast three years, *viz.* one with bread and water, the other two as his Confessor shall injoin him.

8. If a man shall unwillingly slay a Layman, let him fast three years, one with bread and water, the other two as his Confessor shall appoint, and let him always lament his transgressions.

9. If he were a Subdeacon, let him fast six years; if he were a Deacon, let him fast seven years; if he were a Mass-priest, ten years; and if a Bishop, twelve, and always lament.

10. If any man so chastise his son, that he thereof die, although against his will; let him fast five years with bread and water *ut supra*.

11. If a Bishop or Mass-priest shall kill any one, let him lose the dignity of his Order, and his penance be always.

12. If a woman shall kill an infant either in her womb, or after it shall be born, whether by taking a potion, or any other way; let her fast ten years, *viz.* three in bread and water, and the other seven accordingly as her Confessor shall in mercy impose, and always bewail the fact.

13. If a man without cause in his rage slea his *xp̄*, let him fast 3 years.

14. If a husband shall out of any impious jealousy beat his wife, so as she therefore dies guiltless; yet let him fast three years, and always bewail his misdeed.

15. If a man shall of his own accord have killed himself, whether with a weapon, or any other devilish instigation, it is not lawful for any man to sing a Mass for such a man, nor to bury him with singing Psalms, nor to cover him with earth being laid in a lawful sepulchre. The same Judgment is to be given upon him, who mischievously ended his life with pain; as also a Thief, Murderer, or Betrayer of his Master.

16. If any one of twenty years of age hath defiled himself with a beast, be it male or female, let him fast fifteen years. And if he hath a wife, and be forty years old, and shall have done such a thing, let him both abstain

fast and fast all his life long; nor let him presume, until he be ready to die, to take the body of our Lord. A young man, or foolish, shall be grievously beaten, who shall commit any such fault.

17. Whosoever shall break wedlock, be it wife or husband, shall fast three days in every week with bread and water, for the space of 7 years.

18. Whosoever repudiates his wife and takes another, dissolves the wedlock. No man ought to cast off, though for life or death, any of those things which by due right belong to Christians; neither may he be buried, who does this among Christians: And concerning a Wife, let the same thing be done: And the Kindred who were present, or gave counsel to these things, let them be punished with the same sentence, unless they sooner repent and diligently amend.

19. If a man hath a Wife, and also a Concubine, let no Priest give them any thing belonging to Christian rights, unless he penitently return to amendment: The same Law shall be to a woman, whether she were Wife or Concubine.

20. If any one married commit adultery with the lawful wife of another, or any wife with the lawful husband of another; let either of them fast seven years, *viz.* three in bread and water, and four as the Confessor shall teach, and lament their transgressions as long as they live.

21. If any woman shall take to her two brethren in marriage, one after another, they deserve judgment, and to be put to most strict penance as long as they live, as their Confessor shall instruct them; and dying, the Priest confer upon them the due obsequies of Christians, if they shall have promised this, that they would have longer done their penance, if they should longer have lived.

22. If any one shall have continued in the exercise of any sin all his life-long without any repentance; we know not what counsel we can imagine for this man, unless to leave him to Gods judgment; nor can he be absolved.

23. If a woman be betrothed to a man, it is not lawful for another to marry her; if any man does, let him be excommunicated.

24. If any man takes away by deceit a Wife or Virgin for his Concubine, against her will, let him be excommunicated.

25. If any one shall entice away the Waiting-woman of another, to lie with her, and shall lie with her against her will; if he be in Orders, he shall lose the dignity of his Order; but if he be a Laick, he shall be excommunicated from every Christian thing.

26. If a Virgine be betrothed, and before marriage be made a Captive, or by any other accident be carried away from him to whom she is betrothed, and it happen that afterward she come into the sight of her Spouse, leave being first asked, they may cohabit *carnaliter*, because she was taken from him against her will.

27. If a woman shall enter into Religion, and afterwards returning to worldly vanities, shall take the administration of a family, thinking with herself, that she may satisfy God from whom she hath turned aside, out of her goods; this can in no wise be, unless she turn away from the custom of her sin, and return to Christ, that she may lead her life as her Confessor shall instruct her, and always carefully amend her transgression.

28. If a Mass-priest or Monk kill a man, let him lose the dignity of his



his Order, and fast ten years, *viz.* five with bread and water, and all the other five, three days in every week, in the rest let him enjoy meat, and while he lives, diligently lament his crime. A Deacon, eight years with bread and water, and the other as abovesaid: A Clerk, six years, whereof four with bread and water: A Laick, five years, three with bread and water, *ut supra.*

29. If any man kill a man in Orders, or his next Cousin, he shall forfeit his land and goods, and shall be done to as the Pope shall appoint, and moreover shall always lament.

30. If a Mass-priest or Monk be wantonly lustful, or violate matrimony, let him fast ten years, and always lament; a Deacon seven, a Clerk six, a Laick five. So be it.

31. If a Mass-priest, or Monk, or Deacon hath a lawful wife before he took Orders, and having left her, entred into Religion; yet afterwards raging in lust, shall privily take her; let every one of them fast as for manslaughter, and moreover vehemently lament.

32. If a Mass-priest, or Monk, or Deacon, or Laick, or Clerk shall commit fornication with a Nun, let every one fast as is meet for his Order, as for homicide, and as long as he lives abstain from flesh; and a Nun ten years, as also a Mass-priest, and always lament the fact.

33. If any one would have any carnal knowledge of a Nun, and she would not, let him fast one year with bread and water for his wicked thought. If a man would know carnally the lawful wife of another, and she would not, let him fast one year for his impious thought with bread and water.

34. If any man would know the lawful wife of another, and she would not, let him fast three *Lents* with bread and water, *viz.* the first in Summer, another in Autumn, and a third in Winter.

35. If any one would have to do any unlawful thing with a woman, let him fast forty days in bread and water.

36. If a man shall have taken another with his daughter, let him compound with the harlot, and either of them fast a year upon Wednesdays and Fridays; on other days they may eat any meat but flesh, and imbrace their own wedlock.

37. If a man know carnally a beast, let him fast fifteen years, *viz.* eight in bread and water; in the other seven, three *Lents* in every year; and upon Wednesdays and Fridays as long as he lives, and always lament his sin.

38. If a man defile himself voluntarily, let him fast three years, and in every one of them forty days in bread and water, and abstain from flesh upon every one except Sunday.

39. If any one kill another with witchcraft, let him fast seven years, *viz.* three years in bread and water, and on the four other, three days in every week in bread and water, and alwaies lament.

40. If any man shall have given a disease to another, let him fast three years, *viz.* one in bread and water. But if he chance to die thereof, then let him fast seven years, as is here ascribed, and alwaies lament his misdeeds.

41. If any one uses witchcraft to procure love, and therefore compound any drugs or amorous porion to eat or drink, or use Negromancie; if he be a Laick, let him fast upon Wednesdaies and Fridaies half a year in bread and water, but upon other daies let him enjoy meat, that is not flesh. A Clerk, one

one year *ut supra*, three days in every week in bread and water. A Deacon three years *ut supra*. A Mass-priest five years, whereof one in bread and water, and on every Friday of the other in bread and water, and on the other days let him abstain from flesh.

42. If any man against nature, and against the good creature of God, any waies defiles himself, let him lament whilst he lives what he hath perpetrated.

43. If any one overlaies an infant in sleep, whereof it dies, let him fast three years, one of them in bread and water, and in the other two, three daies in every week. But if it shall happen from drunkenness, he shall be more grievously punished as his Confessor shall teach, and the delinquent alwaies lament.

44. If an infirm infant dies a Heathen, and this came to pass by fault of the Priest, let him lose the degree of his Ordination, and diligently make compensation. And if it hapned through the negligence of his friends, let them fast three years, *viz.* one in bread and water, and the other two, three daies in a week, and alwaies bewail it.

45. If any shall sell any Christian to a Heathen, let him be unworthy to enjoy any benefit of Christian folk, unless he speedily redeem him home again, because he had sold him from home: And if he cannot do this, let him distribute that price altogether on Gods grace, and free another Captive with another ransom, and set him free. And this let him fulfill three years, as his Confessor shall appoint: And if he hath not means by which he may redeem the Captive, let him increase his punishment into seven years penance, and alwaies lament.

46. If any shall grievously offend by manifold sinning, and desires at length to leave and correct these things, let him often go to the Monastery, and there alwaies serve God and man as he shall be taught; or let him depart a great way from his country, and alwaies repent whilst he lives, and help his soul, at least her eon earth, with all profound amendment which he may find, as shall be taught him.

#### *Of Satisfaction.*

1. In this kind of confession, the help of some Divine does very much conduce to the expiation of sin, not less then the counsel of some learned Physitian to the curing of a disease.

2. Oftentimes men sin by concupiscence, and sometimes through the instigation of the Devil; and that is most terrible, that men bound to God, so often against God, as they lose their dignity.

3. And to amend this, there is need of severe penance, but alwaies according to the manner of the order and sin, as is ordained in the Canons; and every one ought with all his strength and endeavour, and also with trouble from the bottom of his heart to go about this. Some may undergo the penance of one year, some of more, but alwaies after the manner of the sin; some of one moneth, others of more; some of one week, others of more weeks; and some of one day, others of more; and some all the daies of their life.

4. It behoves a Physitian, who will heal grievous wounds, to make use of exquisite medicines: But there are none so grievous wounds as these sins,

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for these wounds lead men to eternal death, unless by confession, repentance or satisfaction they make themselves whole.

5. Therefore, both man and woman may be Physicians who should heal these wounds: First the wound is to be inquired into by good counsel; then the ulcerated matter, which does inwardly putrifie, is to be let out, that is, he purge himself through confession.

6. Every man who will blot out his sins by confession, embraces sound doctrine, not less then he, who takes a healthful potion from the Physician, a deadly disease.

7. No Physician can rightly cure any disease or wound, until the venomous matter which putrifies inwardly, be drawn out: Neither can any man rightly teach penance, who refuses to confess; nor can without confession of sins, pronounce absolution; like as he cannot well be made sound, who hath drunk any deadly thing, unless the venomous force be expelled.

8. Confession being finished, any man may by penance easily obtain Gods mercy, if he does this from the bottom of his heart, and moreover deplore that he seduced by the Devil committed these sins.

9. A prudent amendment does very much benefit this confession, as the cure of a sickness a good Physician. Concerning the works of any one, the Confessor may enquire by the Canons, and moderate according to the power and wealth of them confessing, as he believes the contrition and carefulness of any ones heart.

10. That is great penance, when a Laick must lay down his arms, and make pilgrimage far and neer barefoot; who must not lie two nights in one place, who fasts much and watches, who daies and nights prays earnestly, and who willingly wearies himself, and who is so untrimmed, that no iron hath touched his hair or nails.

11. Who neither comes into warm bath, nor soft bed, nor tastes flesh, nor drink which may make him drunk; who comes not into a Church, but yet zealously seeks holy places, and confesses his sins, and asks intercession; who kisses no body, yet bitterly deplores his sins.

12. He is propitious to himself, who in this manner prejudgeth himself: And indeed this man is happy, although in nothing he is more unwatchful, then that he might fully correct himself. Neither was there ever in the world any so grievous a sinner, but he might appease God, if he ardently went this way.

13. There are many waies to appease God for sins; and alms do very much conduce to the forgiveness of them.

14. He who hath means sufficient, let him build a Church to the praise of God; and if he hath more besides, let him give land to it, and bring in young men, who may perform holy service for him, and therefore daily minister to God; and let him repair Gods Church for his means, and Highways; let him make Bridges over unpassable waters, and dirty places; let him distribute for Gods sake that which he has, and with as much diligence as he can; let him carefully relieve the poor, widows, orphans and strangers; let him manumitt his own servant, let him redeem servants from other men to be set free, especially the poor man taken in war; let him feed and clothe men in want, and allow them houseroom and firing, and bath and bedding; and in his necessity in all places let him make intercession in singing Masses and Psalms; and let him in his devotion towards his

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Lord God very much chastise himself, by abstaining from meat and drink, and all other bodily desires.

15. And he who hath less means, let him set himself all he can, that in his devotion towards God he paie tithes of all he possesseth; that he examine himself as often as he can, and often with alms visit Churches, and salute Holy places with lights, and give his house meat, and protection to them that need, and also fire and some nourishment, and bed and bath, and take care to clothe and feed the poor as much as he can.

16. For Gods love let him visit the sorrowful and sick, and bury the dead, often in secret lie prostrate upon his knees, and often lie prostrate and stretched out upon the ground; let him fast, watch and pray, night and day diligently. He who hath not means sufficient to perform all these things, let him endeavour to do as much as he is able: Let him wear out his body against lust, if ever by delicacie or lust he hath pleased the devil: Now let him by fasting correct that sin, which before he had committed by gluttony; and let him often watch and labor, if at any time he were wonted to the contrary, and given to ease, when he ought not, or had at other times beyond measure watched in vain: Let him afflict himself with cold, and frozen baths, for that heat whereof he sinned by lust. If he hath any where offended another unjustly, let him diligently make amends; and if another hath offended him, let him be appeased as much as in him lies, against those sins which grew up in himself from the seed of the Devil: And if he hath misled any one out of the way, that he might make any gain thereof, let him carefully reduce him to the right way. This is that which I will. If he shall have provoked any one to sin, let him do to him what is necessary, *viz.* Let him reclaim him from his sins, and again lead him in the right way. He who diligently dehorts another from his sins, renders his own the lighter.

17. This judgment every one by the counsel of his Confessor may give himself, who with a constant mind will break off his sins and correct them, *viz.* Let him distribute for Gods love all he hath; let him leave with them, lands, country, and all the desirable things of this world, and serve the Lord day and night, and endeavor by all the power he can against his worldly desires all the daies of his life. What then is left? that by exhorting others, he gathers to him for the study of godliness, by all possible means he can.

*Here in these following, shall be said how any Sick man may redeem his declared Fast.*

18. Every man may redeem the fast of one day with one penny; and any one may redeem the fast of one day with two hundred and twenty Psalms; and any one may redeem the fast of twelve moneths, with 30<sup>s</sup>. or by setting free any one of that price: And for one daies fast let him sing six times *Beati*, and also six times *Pater noster*; and for the fast of one day, let that man bend his knee, and bow himself to the ground sixty times, saying *Pater noster*. And also a man may absolve the fast of one day, if in his prayers to God he through all his members lift up himself to God by true confession and right faith, and fifteen times sing *Miserere mei Deus*, and also *Pater noster* fifteen times; Then is a lightening of the sins of the whole day granted to him.

19. Any man may absolve a seven Winters fast in one year, if he daily shall



shall sing the Psalms of the Psalter, and do the same at night, and fifty on the evening; one Mass may absolve the fast of twelve daies, and with ten Masses the fast of four moneths may be bought off, and with thirty Masses the fast of a whole year may be bought off, if any man will out of true love to God intercede for himself, and confess his sins to his Confessor, and amend those things as he is bidden, and alwaies afterward avoid them.

*Of the Penance of Mighty men.*

1. Thus a mighty man, and having many friends, may by the help of his friends mitigate his penance. First, in the name of God, and by the testimony of his Confessor, let him manifest a right faith, and forgive all who may have sinned against him, and make his confession without any omission of his sins, and endeavour to repent, and take his penance with much grief.

2. Then let him lay down his Arms, and unprofitable things, and idle penca, and taking his staff in his hand, let him go diligently barefoot, and let him use hair-shirts, nor come on a bed, but lie in a cottage, and do this the number of seven years, and prepare himself three years on this manner, and take to his aid twelve of his companions; let them fast three daies with bread, crude pottage, and water; and let him get as well as he can, to finish the work, seven times an hundred and twenty men, who may every one of them fast for his sake three daies; so the number of these Fasts will amount to so many Fasts, as there are daies in the seven years.

3. When any one fasts, let him distribute the dishes wherein his meat was, to all the poor men of God; and in the three daies of his Fast, let him lay aside all worldly business, and day and night as often as he can go to Church, and diligently watch there in Alms light, and cry to God, and beg remission of sins with a sorrowful spirit and bended knees. Also let him often stretch himself upon the sign of the Cross, now standing upright, now prostrate upon the ground; and let every mighty man learn sincerely to weep and deplore his sins; and also on those three daies feed as many poor men as he can; upon the fourth, let him stoop down to wash their feet; and let there upon the same day be celebrated for the Penitent so many Masses, as any one can by any means perform, and on the time of the Masses let him be absolved; and then let him take the Eucharist, unless that through too much guilt he be so hindred, that he dares not take it: Yet let him promise for the future, as much as in him lies, alwaies to do well, and whilst he lives, by Gods help, to avoid injustice, so as he may alwaies and rightly hold his Christendom, and renounce Heathenism. Minde, O ye Ministers of God, his words, and diligently correct his works, that so he may set up all Justice, and, by the help of God, as much as in him lies, destroy Injustice. It is very necessary he should perform that to God, even in the least thing, which he hath promised.

4. This is the lightening of the penance of Great men, who abound in many friends: But it is not granted to an Indigent man to proceed so: It is therefore expedient more strongly to exact this of him; and that as is meet that every one should wash away his sins, and undergo himself his correction. *Scriptum est enim, Quia unusquisque onus suum portabit.*

These Canons are set out in the Original by Abraham Wheelock, and by him translated into Latine, in his Addition to the History of Bede, between the Laws of King Edgar and Ethelred, pag. 65. until 88. Eccle.

*Ecclesiastical Laws made by Canutus, who began  
to reign in the year of our Lord 1016.*

**T**HIS is the Decree, which *Canutus* King of *England*, of *Denmark* and *Norway*, by the counsel of the wise men, to the glory of the Immortal God, the ornament of the Royal Majesty, and the utility of the people, hath ordained at *Winchester*, upon \* *Midwintertide*. \* *Christmas-day.*

1. First of all, let all men devoutly and holily worship only one God, and strictly hold themselves to one rule of Christian religion, and obey with all faith and observance King *Canutus*.

2. And protect Gods Church, and defend it, and frequent it as well for the health of our soul, as the commodity of others. It is meet that one peace be comprehended in all Christian Churches, and also that all Christian men have it in great veneration. For, Gods peace is to be wished for before other things; next after that, the Kings peace is to be kept. It is therefore very meet, that the peace of the Church of God, and the tranquillity delivered into the Kings hand, be alwaies kept inviolable. If any man shall violate either, let him be fined and suffer death, unless the King shall forgive it. But if any one shall ever hereafter break the peace of the Church of God, so as he kill a man within the walls of a Church, let it be inexpressible, and all men for the love of God persecute him as an enemy, unless he flee from thence to some *Asylum*, that the King may suffer him to enjoy his life, after he had abundantly given recompence to God and man: Which if he shall do, and pay to Christ and the King the price of his head, then let him be inlawed: And then if he go about to make compensation, and the King suffer it, let him pay the whole mulct of the Church, which is in the name of the breach of the Kings peace, and purge the Church, and be ready to perform what is meet to the Kindred and Lord of him who is killed, and be very diligent to return into Gods favor.

3. And if any man break the peace of the Church, and do not kill any man, let him make compensation according to the nature of the crime, whether he did strike, or stole, or committed any other wickedness. First then, let the mulct be paid according to the nature of the crime, and the excellency of the Church: For there is not one and the same terrene dignity of all Churches, although all are of the same Divine consecration. Those crimes which may be expiated, if done in a Mother-church, let them pacifie the King, that is, with five pounds in English money; and a Middle-church with an hundred and twenty shillings, and that is the Kings fine; and if it be a lesser, where there is little Service, and hath a church-yard, with sixty shillings; and if a Field-church without a church-yard, with thirty shillings.

4. All Christian men ought principally to be very careful, that Gods Holiness, and Orders, and Places consecrated to him, be religiously observed, and to give a due respect to every degree: For let them understand that will, or can, much and more is it that the Priest hath to do for the benefit of the people, if he rightly consider it; much is the Supplications, and more is the Consecrations, by which in consecrating Baptism and the Eucharist, the Devil is beaten and driven back; and Angels do incompass  
holy



holy things, and defend their deeds, and through Gods power the Priest does sustain them, as often as he does truly serve Christ. That is it, they do all the while the Priest doth from his soul beg of Christ, and earnestly request of him those things which are necessary for the life of the people: They therefore for the fear of God ought to be preferred in dignity before other men.

5. And if any man accuse a Priest Regular, and he is conscious of no such crime, let him celebrate the Mass, and take the Eucharist thereon, if he fear not to do it, and it shall free him from the calumny of one man: But if there be a threefold accusation, having taken the Eucharist, (if he presume to do it) and having joined himself to two of his Order, let him blot out all suspicion of the supposed crime. If any one shall accuse a Deacon being a Regular, of a crime by a single testimony, the Deacon conjoining himself with two of his Order, may free himself from the crime: But if there be a threefold accusation against him, the Elders of that Order being assembled, let him free himself of the crime. If any accuse a Country-Priest, who hath bound himself in no Order of Religion, let him purge himself as a Deacon living by rule. If any man who serves at the Altar be accused of a crime, and is so friendless that he cannot get one who will swear with him, let him eat the execrated bread, and let God judge of the thing; unless it be lawful by taking the Eucharist to free himself from the crime. If any man in holy orders be accused of capital Broils, so as that he were the author or counsellor of the death of another, let him be acquitted by offering himself to the kindred of them who were so beguiled or slain; and if he hath no kindred, let him betake himself to his companion, or fast until he be lean, and eat the execrated \* bread, and let God give judgment thereupon. But let not a Monk anywhere with right accuse another of breach of friendship, or pay any thing for feuds; for he hath rejected whatsoever he might acquire by the right of kindred, when he first bound himself to the rule he professes. If a Mass-priest be not very upright in taking of witness, or be forsworne, or be the author or counsellor of any theft, let him be dispoiled of the dignity of his function, and be deprived as well of all society and friendship, as honor, unless he shall give abundant satisfaction to God and man, as he shall be commanded by the Bishop; yet let him give security, that afterward he shall not commit such things. But if he will purge himself, let him do it by the triple purgation, or according to the nature of the crime.

*Copy note*

*An exhortation to Churchmen to live well.*

6. And we command, that every one of all Orders do diligently and holily keep the Religion of his Office; especially the Servants of God, Bishops, and Abbots, and Monks, and Nuns, and Canons do bend their minds to their duty, and live according to their Rule; That they often call upon Christ day and night, and pray for all Christian folk. And we pray, and teach all Gods Ministers, especially Priests, as they obey God, they favor chastity, so that they may shun Gods wrath, and avoid the flames of hell. And certainly they know it is not lawful for them to satisfy their lust to accompany any woman: And they who will abstain from flesh, and nourish chastity, shall obtain Gods mercy, and with equal right enjoy a heap of earthly honor, as though he were a man of free condition. \* And that every

*Christian*

\* Although this be in the Saxon in this Chapter, yet both Mr. Lambert and Wheelock in their translations have placed it in the 7. Chap.

*Christian man, for the fear of God, does restrain the unlawful lusts of the flesh, and obey the commands of Gods law.*

*Of forbidden Matrimony.*

Cap. 7.

And we teach, and pray, and command on Gods name, that no Christian man whatsoever does marry within the sixth degree of his kindred, nor does take to wife the widow of his kinsman who was within the sixth degree, nor that he marries any within the like degree to her who was his wife, nor his Gossip, nor a Vestal Nun, nor one Repudiate, let no Christian man marry. And lastly, he who shall carefully imbrace Gods laws, and study to keep his soul from the flames of hell, let him not be a follower of Harlots, nor have more wives then one, and that she be his bewedded wife.

*Of paying Tithes.*

8.

And let every one, every year, pay justly his dues to God: That is, Plough-alsms, fifteen nights after *Easter*; the Tithes of young living creatures, at *Whitsuntide*; and the Tithes of the Fruits of the earth, at the feast of *All Saints*. But if any one will not pay his Tithes after the manner aforesaid, viz. of the tenth acre of Plough-land, then let the Kings Sheriff, the Bishop, the Lord of the Soil, and the Priest of the Church meet, and so thank to him, restore the tenth part to the Church to which it was due, and leave the ninth to him: As concerning the other eight parts, let the Lord of the Soil have one half, and the Bishop the other, be he the Kings man, or any Nobleman's.

*Of Peter-pence.*

9.

And the money due to *Peter*, is to be paid upon the feast of *S. Peter*: He who shall not pay it, shall pay that penny to the Bishop, and thirty pence beside, and two hundred and twenty shillings to the King.

*Of First-fruits.*

10.

Let the First-fruits be paid at the feast of *S. Martin*; and if a man shall forbear, he shall give them elevenfold to the Bishop, and two hundred and twenty shillings to the King.

*Of the Tithes belonging to the Church of a Freeman.*

11.

If a Freeman hath a Church upon his Demesnes, which hath a Church-yard, then it shall be in his power to confer upon his Church the third part of his Tithes: But if there be no Burying-place belonging to the Church, then may the Lord of the Soil give the Priest so much of the nine other parts as shall seem good to him; and let the Hearth-money be first paid to the Church by every Freeman.

*Of money for Lights.*

12.

And let money be given to Lights, thrice every year: First upon the feast of *Easter*, let one halfpenniworth of wax be imposed upon every Hide of land; and so much again upon the famous feast of *All Saints*; and the like to be done upon the feast of the Purification of *S. Mary*.

of



14.

*Of the money called Symbolum animæ, and of Burial.*

And it is meet, that after a grave be opened, the Burial-money be forthwith told out. And if a man bury one dead, out of the bounds of his parish, yet shall the Burial-money notwithstanding be restored to the Church to which of right it did belong.

15.

*Of Gods right, in observing Festivals and Fasts.*

And let every one defend all Gods right, all he can: Let him celebrate Festival and Fasting-days; also Sunday keep a feast from Saturday noon to Munday light, and let every man abstain from bodily labor.

16.

*Of Sunday.*

And we expressly forbid any Market to be kept, or any Convention of the people to be made upon a Sunday, unless there be urgent necessity: And also let every man upon a Holiday abstain from hunting, and all bodily labour.

17.

*Of Fasts.*

And we command that every man observe all these Fasts, whether of the Ember-weeks, or Lent, or any other Fast, with all godliness; And to fast all the days of *S. Mary*, and the feasts of all the Apostles; but of *Philip* and *James* we command not to be kept Fast, because of the Festivity of *Easter*: And upon every Friday, if it be not a Festival, fast. And let no man fast from *Easter* until *Whitsuntide*, or from *Christmas*, until the *Octava's* of *Epiphany*, unless he were willing, or enjoined by the Priest.

18.

*Of the times of Vacation.*

And we forbid the Ordal upon all Festivals, Ember weeks, and other right Fasting days, and all Pleadings at Law from the feast of the Anniversary of the coming of our Lord, until eight days after *Epiphany*; and from *Septuagesima*, until the fifteenth day after *Easter*. And indeed, the wise men have ordained, that the Annual feasts of *S. Edward* and *S. Dunstan* be religiously observed of the Englishmen upon the 15. Kalends of *April*, and 15. Kalends of *June*. Let every Christian man, upon these solemn feasts, as is meet, be peaceable and free from all fraud and malice: And if any one did owe any thing to another, whether in the nature of pledge, or compensation, let him either repay it before these days, or soon after.

19.

*An Exhortation to Confession and Penance.*

And we command for Gods love, that all Christian men understand those things which are necessary for the good of their souls: For, a time will come, when we would rather have obeyed Gods will, when we had time given us, then to have enjoyed all the goods which all men enjoyed in the world. Certainly a reward will be given to every one of us, according to the deeds of every one: Then woe be to the miserable, which in their life deserved the eternal punishments of hell. And therefore, that we may diligently avoid our misdeeds, let us ingenuously confess our sins, and abstain from all wickedness for the future, and duly compensate, and command those Laws to others, which shall not be grievous to obey. This is right

right Judgment, and with God acceptable; and he is truly blessed, which by rule shall judge. For, Almighty God, the Creator of all things, created us all, and with an inestimable price redeemed us, viz. with his own life poured out upon us.

*An exhortation to the Eucharist, and honest life.*

Cap. 19.

And let every Christian man do all those things which conduce to his health, and be very careful of his Christendom. And he which will do all things necessary for the good of his soul, which all ought to do, must understand, that thrice at least every year he must prepare himself to receive the Eucharist; and he who trusts that he shall be acceptable, must rightly observe all his words and deeds, and religiously keep his oath and faith given, and do justice all he can, in all parts of our Dominion, and diligently follow Gods justice in word and deed. So then at length all of us shall abundantly obtain Gods mercy.

*Of Fealty to the Lord.*

20.

Further we will follow what we teach others, always to be faithful to our Lord, and defend his honor with all our might, and obey his will: For, whatsoever we shall do to our Lord in right and vertue, will be to our self a great ease. For in this thing, God the Creator of all things, and Lord, will be faithful to us. It is therefore very meet, that Lords govern their servants with reason.

*To worship God from the heart, and faith.*

21.

And we greatly admonish all Christian men, that inwardly from their heart they love God, and that they stedfastly hold Christian religion, and devoutly obey Gods teachers, and diligently learn Gods law, and contemplate it, and often and much follow it, to the profit of themselves.

*That men throughly learn the Lords Prayer, and Apostles Creed.*

22.

And we teach, that every Christian man so learn, that at least he throughly understand the right Faith, the *Pater noster*, and *Apostles Creed*. For, with one of these every Christian man does pray to God; and with the other profess a right faith to him. Christ himself first sang the Lords Prayer, and taught it his Disciples: And that godly Prayer is made up of seven petitions, which whosoever shall not counterfeitley, but from his heart speak, speaks with God himself of all those things which are necessary to this life, and the life to come. How then can any man with any reason pray to God from his soul, unless he believes on God, and inwardly hath a right faith? For, he that will not learn these things, after death shall neither partake of any part of rest with Christians, neither alive shall he be admitted to the Eucharist, nor lastly shall be deemed worthy the name of a Christian man. Nay, it shall not be lawful for him to answer for any one in Baptism, or before the Bishop in Confirmation, unless he shall learn these and throughly con them.

*That deadly sins be avoided.*

23.

And we teach, that every man does alwaies, and carefully avoid all dangerous and deadly sins; and if he by chance offend by the impulse of the Devil, let him make amends therefore, by the instruction of the Priest.

I i

And



Cap. 24.

*And among these, Avoutry.*

And we teach, that every one as long as he lives, does avoid all Avoutry and forbidden lust, and breach of wedlock.

25.

*That men be fearful of the dreadful Judgment.*

And we teach, that the fear of God may alwaies so sink into the souls of men, that days and nights they may fear punishments for their sins, and dread the day of Judgment, and be affrighted for the torments of Hell, continually think of the last day of their life.

26.

*That Bishops and Priests faithfully perform their duties.*

Truly, Bishops are Gods proclaimers, and Interpreters of Gods law: It is their part openly to set forth the benefit of Divine things, and expose themselves by well living an example to imitate; and they who will, may give their ears and mind to these things. He is a bad Keeper, who will not defend his Flock at least with his voice, if he can do no more, against him who shall go about to spoil it. And there is one most hurtful Devil of all other, who alwaies mightily endeavors to bring destruction upon the souls of men. Wherefore it will be expedient that Pastors watch, ward, and proclaim to the people, what dangers hang over them from their mighty adversaries, and that they be provided against them. We call Bishops and Priests, Pastors, to whom it belongs by teaching and doctrine, to look to, and defend the flock of the Lord, lest at any time the Wolf enflamed by rage and wickedness, should bite and tear them with his teeth. But yet if any one will shut his ears against the Divine precepts and admonitions, be it between God and himself, and let the Name of God be alwaies praised; To whom be all praise, glory and honor, world without end, *Amen.*

Among the Humane Laws (so stiled) of *Canutus*, I find these inserted.

4.

*Of Casting out of Witches and Sorcerers.*

And we command, that this our Dition be every where purged and cleansed from all deadly wickedness: And if Witches, Fortune-tellers, secret Murderers, or any Common Bawds, be any where taken in our Kingdom, let them be banished out of the confines of it; or in the Kingdom, (unless they become of a better mind, and mend their manners) let them be put to a vile death. Who will not obey right, and Divine and Humane Laws (unless they repent, and make abundant satisfaction) be commanded to be banished, &c.

5.

*Of abolishing the Superstition of the Gentiles.*

We plainly forbid all Heathenish Adoration. It is barbarous Worship, whether any one worship Idols, (*viz.* the Gods of the Gentiles) the Sun, the Moon, Fire, or Running water, Fountains, or Stones, or any kind of Trees or Wood, or hath observed the superstition of Witches, &c.

Although at any time no leave is given for Injustice, yet without doubt Iniquity is most forbidden upon Holy daies, and in Holy places; and by how much a man is richer, and placed in dignity above other men, by so much more abundantly shall he make amends to God and men for wrong done. And

And how he shall compensate to God, we refer to the precepts out of Scripture, and to Men, as is set down in Humane laws.

*Of killing a Minister of the Altar.*

Cap. 36.

If any of them who serve at the Altar, be killed of any man, let that man be excluded out of the patronage of all Divine and Humane laws; unless together with banishment, he make abundant satisfaction for that wickedness, and give satisfaction to the Kindred of him who was killed; or at least, together with sufficient men who may be sworne, wash out all suspicion of the crime. And this satisfaction ought to be made to God and men within thirty daies, upon the penalty of the forfeiture of all he hath.

*Vide Para. 9. of the antecedent Chap.*

*Vide Para. 10. of the antecedent Chap.*

37.

38.

*Of Arresting or beating one in Orders.*

39.

39. If any one shall imprison, bear, or use a man bound to God ignominiously, let him make amends as is meet: Let him pay to the Bishop for the dignity of his order, a mulct by the name of \* *περσοβοτε*; and to the Lord or King full satisfaction for breach of the Peace; or at least wash out the crime with a full and perfect excuse.

\* Cleansing the Altar.

*Of a man Ordained guilty of Death.*

If any one in Holy Orders be guilty of Death, let him be taken and held to what punishment shall be inflicted upon him by the Bishop.

*Of a man condemned, who desires a Confessor.*

If any man condemned to death, freely desires a Confessor to confess his sins, let it be granted him: But if any one shall deny it him, let him pay the King an hundred and twenty shillings, or at least purge himself from the crime, and have five men joined with him, and be himself the sixth.

*Of observing Sunday and Festivals.*

No man, as much as possible can be, condemned for any crime, unless he did resist or flee, shall be put to death upon a Sunday, but shall be kept bound until the feast be passed. If any Freeman work upon a Holy day, then let him stand in the pillory, and give satisfaction to God, as it shall be commanded him: If a Servant do any work, let him be beaten, or be put into fear of beating for it. If a Master command his Servant unwilling to work upon a Festival, let him be fined to his Servant, and the Servant free for the time to come: And if the Master be a Dane, let him pay the mulct of the Law-breaking; An Englishman shall be fined according to the nature of the fact, or excuse it.

*That men observe Lent and Festivals.*

If a man break Lent by Fighting, Marriage, Rapine, or by committing any other wickedness, let his compensation be double. The like Law is, according to the nature of the fact, if any of these be committed upon any solemn Festival. And if any one will purge, let him bring a threefold purgation.



Cap. 45.

*Of detaining the Duties of the Church by force.*

If a Dane shall resist by force any one desiring the rights or duties belonging to God, let him be punished for breach of the Law; An Englishman shall be assessed in a deeper mulct, unless he purge himself with eleven men, and be himself the twelfth man. But if he wound any man, let him make amends and pay a grievous mulct to the Lord, and let his hands be bored through, unless he shall redeem them from the Bishop. But if he killed any one, let him be outlawed, and pursued by all Magistrates with all the harm that they lawfully may: And if afterward that man so pursued be killed, let it be confirmed, and unpunished, and no further enquired after.

46.

*Of a man breaking Holy Order.*

If any man violate his Order or Rule of living, let him be fined according to the dignity of his Order, or price of his head, for punishment of the breach of the Law, or forfeit all he hath.

63.

*Of Repairing the Church.*

All men by right ought to use their endeavor to repair the Church.

64.

*Of him who keeps a man Excommunicated, or Outlawed.*

If any man shall unjustly keep any Fugitive from Gods law, let him be restored to right, and forgiven those things which did appertain to him, and let him pay to the King the price of his head: But if any one shall keep and hold any other excluded from the protection of Divine or Humane laws, he shall endanger himself, and all he hath.

*The Conclusion of Canutus his Laws.*

Now I beseech all men, and in the name of Almighty God command every man, that they be truly from their heart converted to God, and with all care and diligence search out what is to be followed, and what avoided. And truly it does much conduce to our souls health, that we love God, and hold his precepts and admonitions, and hear his word by his teachers: For we shall bring forth these to be seen in that day, wherein God shall come to give judgment upon all men according to those things they did whilst they lived. And then at length shall that blessed Keeper bring the Flock committed to his charge, into the Heavenly kingdom, and the joys of Angels, for those things which he had done in his life; and also that blessed Flock follow that Pastor, who hath wreathed it out of the hands of the Devil, and give the gain to God. And further we study, that all men may so agree to please God, that for the time to come we may avoid the flames of Hell-fire. The Interpreters of Gods Law ought often to preach the benefit of Divine things; and indeed it is their function, and does much benefit all men to salvation: And all men ought with a good mind diligently to hear, and have Gods admonitions always fixed in their souls for their profit. And lastly, that every one, by his words and deeds all he can, holily and thankfully do well, to the greater amplitude and glory of God his Lord; for so at length we shall abundantly all of us obtain Gods mercy. Let the name of the Lord be praised, to whom be laud, honor and glory for ever. God Almighty be merciful to us all, according to his will. Amen.

Eccle-

*Ecclesiastical Laws made by Good King Edovard,*

*Who began to reign Anno Salutis 1042.*

*Of Clerks, and their Possessions.*

Cap. 21

**L**et every Clerk, and also Scholars, and all their goods and possessions wheresoever they be, enjoy the peace of God and his Church.

*Of the Times and Dayes of the Kings Peace.*

31

From the coming of our Lord, until eight days after Epiphany, let the peace of God and his holy Church be all over our Kingdom; also from *Septuagesima*, until eight days after Easter; also from the Ascension of our Lord, until eight days after Whitsuntide; also all the days in Ember-weeks; also upon every Saturday from the ninth hour, and all the day following until Munday; also upon the Vigils of *S. Mary, S. Michael, S. John the Baptist*, of all the Apostles and Saints whose solemnities are celebrated by Priests upon Sunday; and All Saints upon the Kalends of *November*, alwaies from the ninth houre of the Vigil, and the following Solemnity, Also in Parishes in which the Dedication is observed; also in the Parishes of Churches where the proper Feast of the Saint is celebrated. And if any one will come devoutly to the celebration of the Saint, he shall enjoy peace going, staying and returning. Also to all Christians going to Church to pray, be peace in going and returning. In like manner at Dedications, Synods, to men coming to Chapters, whether they be summoned, or of themselves have any thing to do, be highest peace. Also if any man excommunicated, flee to the Bishop for absolution, let him freely, in going and returning, enjoy the peace of God and his Church. But if any man shall do otherwise with him, let the Bishop do justice therefore: But if any arrogant man will not amend for the justice of the Bishop, the Bishop may make the matter known to the King; and the King may constrain the malefactor to make him amends whom he hath outlawed, *viz.* first to the Bishop, then to him; and so they shall be two swords, and the sword shall help the sword.

*Of the Justice of the Church.*

Wheresoever the Kings Justice is, or before whomsoever Pleas are holden, if one sent of the Bishops coming there, opens the cause of the holy Church, it shall first be determined: For it is just that God be every where honored before others.

*Of all Tenents of the Church.*

Whosoever shall hold any thing of the Church, or have a mansion upon the ground of the Church, shall not be compelled to hold Pleas out of the Ecclesiastical Courts, although he be outlawed, unless (which God forbid) he shall have default of right in the Court Ecclesiastical.

*Of Guilty men fleeing to the Church.*

Whosoever, guilty or nocent, shall flee to the Church for protection, after that he hath gotten the entrance of the Church, let him not be apprehended.



prehended of any man pursuing him, unless by the Bishop or his Minister; but if in fleeing he enters into the House or Court of any Priest, let him enjoy the same security and peace he should have had at the Church, so as the house of the Priest and his Court stood upon the ground of the Church. Here, if the thief or stealer be, what he hath evil gotten, (if it be at hand) let him restore; but if he hath wholly consumed it, and hath wherewith to restore of his own, let him make full satisfaction for the damage he brought to him who was damnified. But if, as is usual, the Thief hath not wherewith to do it, and by chance hath often gone out of the Church, and Priests houses, having restored the thing taken away, let him abjure the Province, and not return; and if by chance he shall return, let no man presume to entertain him, unless he have leave from the King.

*Of breaking the Peace of the Church.*

Cap. 7.

If any one shall violently infringe the Peace of the Church, the Justice belongs to the Bishops; but if one guilty in avoiding their Judgement, or arrogantly contemning it, shall despise it, let the complaint thereof be brought to the King within forty days, and let the Kings Justice make him give Security and Pledges (if he can get them) until he first give God, afterward the Church, satisfaction. But if within one and thirty days, either by his friends or acquaintance, or by the Justice of the King, he cannot be found out, the King shall Outlaw him by the word of his own mouth: *i. e.* he shall be excluded out of all protection of the King: But if after he shall be found, and can be retained; let him be restored alive to the King, or his head if he shall defend himself, *Lupinum enim gerit caput*, which in English is called pulseyheopos. This is the common and general Law concerning all men Outlawed.

8.

*Of the Tithes to be restored to the Church, of Sheep and Hogs.*

The tenth sheaf of all kinde of corn is due to God, and therefore to be restored to God: And if any one hath a company of Mares, let him restore the tenth colt to God; he who hath but one or two, for every single colt, one single peny: In like maner, who hath many Cowes, the tenth calf; who hath but one or two, for every calf one single halfpeny: and who make Cheefe, give to God the tenth; but if he make none, milk the tenth day. In like maner the tenth Lamb, the tenth Fleece, the tenth Cheefe, the tenth Butter, and the tenth Hogg.

*Of Bees.*

In some these  
two Chapters  
are joyned.

In like maner the tenth of the profit of Bees; as also of under-Wood, of Meadow, and Waters, and Mills, Parks, Warrens, Fishponds, tender Sprouts, and Gardens, and Merchandize, and all other things which God shall give, the tenth part is to be restored to him who gave the nine parts together with the tenth; who shall have detained it, let him be compelled to restitution by the Justice of the Bishop and King (if need be.) For these things St. *Augustine* hath Preached, and are granted by the King, Barons, and People; but afterwards by the instinct of the Devil many have detained it, and Priests careles of growing rich, did not care to take pains to get them, because they had sufficient means of living: For in many places now there are three or four Churches, where then there was but onely one, and so they began to be diminished.

of

*of them who are judged to be brought to Judgment or Water, by the Justice of the King.*

Cap. 9.

In that day wherein Judgment ought to be done, let the Minister of the Bishop and his Clerks come thither, and in like manner the Justice of the King, with Legal men of that Province, who may see and hear that all things be rightly done; and whom the Lord by his mercy will save, let them be quit and freely depart; and whom the iniquity of the fault the Lord shall not condemn, let the Justice of the King do justice upon them. But the Barons who have their jurisdiction of their men, let them see that they do so concerning them, as they incur not displeasure with God, and offend not the King. And if a Suit does arise concerning men of other Baronies in their Courts, let the Justice of the King be present, because without it the Suit cannot be determined. If any of the Barons hath not Justice in the Hundred where the Plea shall be holden, it shall be determined at the next Church where the Judgment of the King shall be, saving the Right of those Barons.

*Of Romeſcot.*

10.

Every one who shall have Thirty pence of current money in his house, of his own property, (by the Law of *England*) shall pay a Peter-penny; and by the Law of the *Danes*, half a Mark. But that penny ought to be summoned upon the Feasts of the Apostles *Peter* and *Paul*, and collected at the Feast which is called *To the Bonds*, so that it be not detained beyond that day: If any one shall longer detain it, let complaint be brought to the justice of the King, because this penny is the Alms of the King, and it is justice he cause this penny to be restored, and the forfeiture of the Bishop and King. But if a man hath more houses, let him restore the Peter-penny for that wherein he resides, upon the feast of *Peter* and *Paul* the Apostles.

*Of the Office of the King, and of the Right and Appendixes of the Crown of the Kingdom of Britain.*

17.

And the King, because he is the Vicar of the highest King, and to this purpose ordained, that he may both govern and rule the terrene kingdom and people of the Lord, and above all things the holy Church, and that he defend the same from wrong-doers, and destroy and root out workers of mischief.

Besides these, Sir *Ed. Coke* in *Cawdries* Case, instances in King *Kenulph*; for that King *Kenulph* by his Letters Patents, with the consent and counsel of his Bishops and Senators of his Kingdom, did give to the Monastery of *Abingdon* in the County of *Berks*, and to one *Ruchnius* then Abbot of the said Monastery, &c. a certain portion of his Country, &c. and that the said *Ruchnius* &c. should be ever free from Ecclesiastical right or jurisdiction, and that the Inhabiters of it from thenceforth be kept under the yoke of no Bishop or their Officials, but in all events of things and discussions of causes they be subject to the Decree of the Abbot of the Monastery aforesaid. And that this Charter was above \* 850 years since, which was in the year 755. and after confirmed by *Edwin* of *Britain*, King and Monarch of Englishmen; and this Grant did continue until the dissolution of the Abby by *Henry* the 8.

\*Counting to the time Sir *Ed. Coke* wrote.

So that the Kings of this Nation have not only of antient time been Nursing fathers to Gods Church, and have exercised their Regal power over the persons of all their Subjects in all cases; but have even dispensed with, and conferred Episcopal jurisdiction. But this was only matter of fact, and



and done but only in one place; nor was it ever established by a Law, before the Statute of *Lollard*, and by *Henry* the Eighth, and the First of *Eliz.* Yet it was afterward (as shall appear in the next Chap.) used by divers Kings, and often adjudged by the Judges before *Henry* the Eighth.

### CHAP. III.

*Ecclesiastical Laws made by William the First, who began to reign in the year of Christ 1067.*

Introduction.

**T**HAT Nations and Kingdoms have their origination from God, we have already in its proper place asserted. And that these Kingdoms thus created by God, have periods, alterations, and conversions set by him, which cannot be foreseen or prevented by man, is certainly as clear and evident as the former; and often owned by God himself in Sacred Writ, as well over his own people, as others. But that therefore any man or men should therefore endeavour to make alterations in Kingdoms, is like to a man, who because all men naturally die, thinks he may kill any man, and father the fact upon God. And if God, even over his own peculiar people, did for the sins of the Kings and people, especially the Israelites, so often convert the line of the Kings; then can it not in reason be expected, in this Iron and much more sinful Age, that God should every where continue a fixt and certain succession of Kings according to the ordinary course of Nature, *viz.* Primogeniture: But that therefore the Pope or any other creature, may arrogate to themselves a right or power superior to the Law of Nature, is no less absurd, then that a Son may kill his Father, because all Fathers have periods set by Nature, which they cannot pass. And that all Subjects do by birth owe a natural subjection to rightful Princes in whose dominion they were born, which relations can never be dissolved but by God himself, we have in their proper places demonstrated: Yet may the exercise of this power be suspended, so long as such Subjects come into the power of other Princes, whether it be by conquest or otherwise, and do owe them a temporary obedience, so long as they continue there; and their posterity born in their dominions, owe such Princes a natural obedience, which can never be dissolved. And also that since there is no other Judge under Heaven to decide the controversie of Princes, but their swords, (which can never be alledged by any Subjects who have Laws to decide their differences) such decision is good, as to the exercise of any Princes power over all them who fall under it, and all Subjects born in such exercise of power or dominion, become natural Subjects to any Prince who by conquest acquires the dominion of another; we have also demonstrated in its proper place. Yet whether it were of old, that Popes did arrogate to themselves this right of deposing Temporal Princes, or debarring them of their right, which about this time was frequently asserted by, and practised by the Popes, and which Pope *Alexander* was pleased to confer upon the Conqueror, against all Right and Law, to the manifest prejudice of *Eadgar Atheling*, let us see the Epistle of *S. Eleutherius* to King *Lucius*, as it is cited in chap. 17. of *S. Edwards* Laws.

In

In the year from the passion of Christ, 169. or 156. our Lord Eleutherius the Pope, wrote to Lucius King of Britain, at the Petition of the King and Peers of the Kingdom of Britain. *You have required of us, that the Roman Laws and of Cesar be transmitted to you, which you would use in the Kingdom of Britain. We can always reprove the Roman Laws, and those of Cesar, but not at all the Law of God: For ye have by Gods mercy of late received into your Kingdom of Britain the Law and Faith of Christ, you have of your self in your Kingdom sufficient Authority, from whence through Gods grace, by the advice of your Kingdom, to make a Law, and by it, through Gods patience, you shall rule the Kingdom of Britain. And you are the Vicar of God in your Kingdom, according to the Kingly Prophet, The earth is the Lords, and the fulness of all the world, and all who inhabit therein: And again according to the Kingly Prophet, Thou hast loved Justice, and hated iniquity, and therefore thy God hath anointed thee with oyl of gladness above thy fellows. And again according to the Kingly Prophet, God is thy Judgement, &c. Therefore neither the Judgement nor Justice of Cesar, for they are sons of the King, Christian Nations, and people of thy Kingdom, who live under your Protection and Peace, and Reign, and are according to the Gospel, Even as a hen gathereth her chickens under her wings, &c. But they are Nations and your People of the Kingdom of Britain, and who divided, you ought to congregate, retell, nourish, hold with your hand, protect, and rule into one for concord and peace, and to the Faith, and to the Law of Christ and his holy Church, and always to defend it from evil doers, and malicious men, and his enemies. Wo to the Kingdom whose King is a boy, and whose Princes eat together in the morning: I Do not call a King because of his small and tender age, but because of his folly and iniquity, and rage, according to the Prophet King: Men of blood and deceitful, shall not live out half their days, &c. By eating, we understand the Pallat, by the Pallat, Luxury, by Luxury, all things filthy and evil, according to King Solomon, Wisdom shall not enter into the soul of the evil doer, nor shall dwell in a body subject to sins. Rex dicitur & Regenda, non & Regno: A King thou shalt be so long as thou rulest well, which thing if thou wilt not do, the name of King shall not remain in thee, and thou shalt lose the name of King, which God forbid. God Almighty grant to you so to Rule your Kingdom of Britain, that you may Reign with him for ever, whose Vicar you are, in the Kingdom aforesaid, who with the Father and Son, &c.*

*Of the Right and Ecclesiastical freedom of Asylum's.*

Cap. 1.

That is to say, Peace to the holy Church. Of whatsoever forfeiture any one is guilty this time, and he can come to the holy Church, let him have peace of life and member; and if any one hath set his hand against that which the Mother Church shall require, whether it be an Abby, or Church of Religion, let him restore that which he hath taken out, and one hundred shillings for forfeiture; and concerning the Mother Parish Church twenty shillings; and concerning a Chappel ten shillings. And according to the peace of the King, in the Laws of the *Morians*, he shall make amends with one hundred shillings; accordingly as of *Heinesfare*, and prepenfed lying in wait.

En perche  
la

*Of Peter-pence, or Rome-pence.*

Cap. 12.

A Freeman who hath Field-Beasts valued at thirty pence, shall pay a Peter-peny. For four pence which the Lord shall give, all his Border-

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ers, and his Boner, and his Servants be quit. A Burger who hath of his proper goods so much as shall be esteemed half a Mark, let him pay a Peter-peny. He who in the Law of the *Danes* is a Free-man, and hath field-cattel which are valued worth half a Mark in silver, ought to give a penny to St. Peter, and for that penny shall all be quit who reside in his Demains.

Cap. 20.

*Of them who do not pay the Roman Tribute, or of St. Peter.*

Who shall deny the penny of St. Peter, the penny let him pay by the Justice of the Church, and thirty pence forfeiture, and if he will be impleaded concerning it by the Justice of the King, let him forfeit to the Bishop thirty pence, and forty shillings to the King.

51.

*Of Religion and the publick Peace.*

First of all we Ordain above all things, That one God be worshipped all over our Kingdom, and the one Faith of Christ be always kept inviolate, &c.

*The Laws are Translated out of the Original, set forth by Mr. Abraham Whelock in his Appendix to the History of Bede, from page 150. to 107.*

Sir Ed. Coke in *Candry's Case*, cites a *quare Impedit*, 7 Ed. 3. tit. 19. where it is agreed that no man can make an appropriation of any Church having cure of souls, being a thing Ecclesiastical, and to be made by some person Ecclesiastical, but he that hath Ecclesiastical Jurisdiction; but William the first, of himself, without any other (as King of England) made appropriation of Churches with cure to Ecclesiastical persons, wherefore it does follow he had Ecclesiastical Jurisdiction. *Here is nothing but argumentum a facto ad jus, and a man may as well infer, that Sathl, Jeroboam, and Azariah did offer sacrifice and burn incense, and therefore they had Sacerdotal power in them; or that King John did give the Crown, and received it again from him, and therefore the Crown of England is holden of the Pope.*

### Ecclesiastical Laws made by Henry the first,

*Who began to Reign in the year of Christ 1100.*

Proem.

THESE at last are the happy joys of the long wished for peace and liberty by which the glorious *Cesar Henry* doth shine forth to his whole kingdom, in Divine and Secular Laws, written Institutes and Exhibitions of good Works, Moderate, Just, Valiant, Prudent, whom God may make to command with happy auspices, and healthful prosperity of body and minde, with his famous wife *Maud* the second, and their children for ever, and the everlasting peace of this Nation.

1.

*His Epistle to all his Leigmen.*

Henry by the Grace of God King of *Englishmen*, to all Barons, and his Leigmen, *French, English*, health. Know that I by Gods mercy and the Common Council [and consent] of the Barons of the Kingdom of *England*, am Crowned King of the Kingdom aforesaid; and because the Kingdom was

was oppressed by unjust exactions, I, in respect of God, and the love which I have towards you [all] first of all make the Church of God free, so that I will neither sell, nor let to farm, nor after the death of an Archbishop or Bishop, or Abbot, will take any thing of the Demesnes of the Church, or her men, until the successor be come in, &c.

*Of the propriety of Causes.*

Cap. 5:

In all Causes Ecclesiastical and Secular, legally, and in order to be handled, some are Accusers, some Defenders, some are Witnesses, some are Judges: In every discussion of honesty, fitting men are to be joyned together, and that without any exaction, until the quality of the Causes, and the intention of the Accused, the manner of Witnesses, and election of Judges be weighed with upright scrutiny: Let there be no foreign Judgements, nor celebrated by their improper Judge in place or time, nor in a doubtful case, or the party accused being absent, the sentence being pronounced *notandum*, that for all, if the accused had competent warning, and lawful leave of answering and defending, he be not denied or impleaded, or outlawed, or circumvented by some stealth, or judged by deceit: If he be satisfied in the Witnesses, Judges, and Persons. If he consent to the Judges, or hurt, or contradict. It is not altogether so in Ecclesiastical business as Secular: in Secular business, after that any is called, shall come, and begin to plead in the Court, it is not lawful to go back before the Cause be determined, although they shall agree; but in Ecclesiastical business it is lawful to go back in the Cause aforesaid. If a man suspect a Judge, or think himself oppressed, surely Judges ought not to be so, *nisi quos imperitus Elegerit*: Neither may any one be heard, or give judgement before that they be chosen, and he who refuses to consent to the elected, let no man communicate with him, until he obey; but if in judgement there arises dissension among the parties, of which a strife comes forth, let the sentence of the more prevail. It is Enacted in the Cause of Faith, or of any Ecclesiastical Order, he ought to judge, who neither takes reward, nor is of another Law, and will do nothing without an accuser: For God and our Lord Jesus Christ did know *Judas* to be a Thief; but because he was not accused, therefore he was not rejected, and whatsoever he acted among the Apostles, for the dignity of his Office, remained firm: As also Clerks ought not to receive Laicks Accusers, so ought not Laicks to receive Clerks to be Accusers of Clerks in their Accusations and Informations; and Witnesses ought to be legitimate, and present without any infamy or suspicion, or manifest spot, because they cannot rightly accuse Priests, who cannot be Priests, nor of their Order; nor is it needful to Judge a man before he hath had lawful Accusers present, and accepts a place of defence to wash out his crimes. And it is our pleasure, as often as many crimes are objected to Clerks by Accusers, and they cannot make good one of the first of which they are accused, they shall not be admitted to the rest. And a Bishop shall not be condemned, unless by seventy two Witnesses, nor the Archbishop be judged of any. A Presbyter Cardinal shall not be condemned, unless by forty four Witnesses: a Deacon Cardinal shall not be condemned, unless by twenty six Witnesses, nor a Sub-Deacon under seven; nor let the greater despair for the force of the lesser men, and there always the Cause may be Pleaded, where the Crime is

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admitted:

Note the pre-  
heminence of  
a Bishop in  
England at  
this time, a-  
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nal,



admitted. If a man stricken, will, he may plead his cause before his Judge; and if he will not before his Judge, he may hold his peace; and as for men stricken, as often as they desire respit, let it be granted: And every man which objects a crime, let him write that he will prove it; and if before he be changed, he will not follow, he is convinced, no crime is to be accounted: But if he will prosecute, if he shall not prove what he objects, let him undergo the penalty which he brought; the Apostle says, *Against a Presbyter a writing is not to be received without two or three approved witnesses*; how much more against Bishops, if these things be observed of Presbyters, and other faithful men? If any one will accuse any of the Clerks in an accusation of Fornication, according to the precept of St. Paul, two or three testimonies are required from him; but if he cannot prove what he saith, by the testimonies given, the accuser may take the excommunication of the accused; and let no man believe him concerning himself, declaring upon another crime; but a confession extorted by fear or fraud, is invalid. Let a Priest beware, that whosoever confesses his sins to him, he tell no body of them, because he confesseth to him, not to his neighbors, or strangers; which thing if he do, let it be set down, and repent all the days of his life ignobly in Pilgrimage. And if at any time a Bishop says any man hath confessed to him any proper crime, and he deny it, let not the Bishop think it does not belong to his injury, that he is not believed for himself alone, and if for scruple of his conscience, he says he will not communicate to him; oftentimes good men are silent, and suffer the ill things which they have known, because they are forsaken in their documents, and cannot allow of their Judges; for although they are true, yet are they not believed of the Judge, unless they be proved by certain appearances: But we cannot at all forbid men from the Communion, although this Prohibition be not mortal, but medicinal, unless men confess of their own accord, and be convicted by judgement: From hence it is such a man is to be named, as the Apostle says, who confesses, or is convinced by ordinary judgement; but if by judgement it cannot be taken away, let it rather be tolerated, lest some man in perversly avoyding ill men departing from the Church, should go before them to Hell: The Communion does not defile any man by partaking the Sacraments, but the confession of their deeds: other mens sins hurt not him who lives well in the Church. Of habit and clothing we read nothing commanded by God; what things are for pomp, are forbidden: And if you shall ask, Canst thou not have an humble heart in a proud dressing (as Hester) God not onely in his anger, but also pittie, overthrows finners.

And they are overthrown two ways: either as the *Sodomites*, where the men were punished for their sins; or as the *Ninivites*, where the very sins of the men were punished and destroyed; and all men are alike to be loved, but you cannot alike profit with all; these are rather to be advised with, who for the opportunity of time and places, and of other things, are more strictly joyned together: To thee either is guilty, both he which hides the truth, and he which tels a lie, because this will not profit, and that desires to hurt; arrogance is not so to be shunned that truth should be left. He that at any time shall accuse a Priest before friendly admonition to his Judges, or Secular Judges, let him be excommunicated. If a Bishop shall have strayed from the faith, or secretly admonished of his subjects, hath appeared

appeared incorrigible, then let him be accused at the Archbishops, or Apostolical seat; for his other actions he ought rather to be tolerated then corrected. If any Bishop be accused for certain crimes, let him be heard of all the Bishops in his Province, not condemned, nor judged, before he has lawful accusers present, and of his Province, not aliens, and he may not refuse Judges elected by him, unless there be an Appeal, which thing is lawful for them designed for punishment; but no affliction, or the keeping the thing detained, ought to injure the Appellant, or the vitiated Cause ayded by remedy of the Appeal: Some men have demanded a year and six moneths to be granted for filling up the Machinations of unskilful men, and to prepare their Reasons, and confirm Witnesses, and seek Counsel, some men a year, in which time most men agree; but less then six moneths cannot be found. But if Bishops or Clerks were ejected by force or fear, or first dispoyled of their goods, let all their goods be legally restored to them, and have so much time as appeared they were disseised before that they be Canonically called in to Judgement. *Gregory* in the Decrees. A Presbyter or Deacon, or any Clerk accused by the people, if the Witnesses who should prove the truth, were not certain of the crime committed, let an Oath be in the mean, and bring him for a witness of the purity of his innocency, to whom all things are naked and open. Also this thing *St. Sixtus* the Pope remembers he had done to one *Bassus*, although made guilty by much examination, he could sufficiently evade the suspicion, and avoid the emulation; *Ferom* upon *Feremy lib. prima*, not giving this to them who would not, or of their own accord, had not made choice of making a form. An Oath ought to have companions, Truth, Justice, and Judgement; if those things be wanting, it is not an Oath, but perjury: For if any one by compulsion be compelled to abjure that thing, which for many years he hath quietly held, the perjury shall not be by him swearing, but by him compelling: It makes not a man guilty, where the minde is not guilty. Let no man circumvent or deceive himself. He who by a false stone swears, is perjured: by whatsoever art of words any one swears, God so takes, as he to whom men swear, does understand. But without doubt it is a less evil to swear truly by a false God, then to swear falsely by a true God; for by how much more that by which men swear is more holy, so much more punishale is perjury: Who exacts an Oath, it is much to the purpose, if he knows that to be a false Oath, or not knows or knows, and gives sentence; the Laws are mine, as my faith stands; I dare not say it is no sin, yet it is a humane temptation; if he knows him to have done it, and compels him to swear, it is Homicide. *Siquis juret falsum te sciente, si te non audierit utrum sit procedendus, si proditus & periculum mortis incurrat, difficillima questio est cui plus noceat, illi cui juratur an Sacerdoti. Mihi videtur quod ille cui magis prodest vel obest; veritatem jurare necessitate cogente non est peccatum.* An Oath is not to be kept when bad, it is unadvisedly pronounced. The Oath of a son and daughter, the father not knowing it, and Vowes of a Monk, the Abbot not knowing of it, and the Oaths of a childe are void.



Cap. II.

*Of the Pleas of the Church belonging to the King.*

There are some Pleas of Christianity, in which the King hath part, in this manner: If the King should suffer, that he who in the Church hath committed Homicide, let him come to amendment. First let him restore to the Bishop and King, the price of his Nativity, and so he may inlaw himself, and then let him dispose five pounds for the peace of the Church, and seek to be reconciled to the Church, as belongs to it, and fully make amends, both to Kindred and Donation. If any man detains the right Tenth, let the Sheriff of the Bishop and King, and of the Lord of the Ground go with the Priest, and without thanks take away, and restore to the Church what shall belong to it, and leave the Ninth part to him who would not pay the Tenth; let them divide the rest into two parts, let the Lord have one half, the Bishop the other, be he a Kings man or another, *Romfeash* ought to be restored upon the Feast of St. Peter in bonds; he who shall keep it beyond that time, let him restore that penny to the Bishop, and thirty pence, let him add to the King 50 s. Who shall keep *Cheriseat* beyond the Feast of St. Martin, let him restore it to the Bishop, and pay eleven fold, and to the King 50 sol. Who married, shall commit adultery, let the King or Lord of him have the superior, the Bishop the inferior: Who shall commit perjury upon holy things, \* let him lose his hand, or half his were, (*viz. half the price of his head,*) and this is common to his Lord, and the Bishop. Who shall bear false witness, let him not afterwards be admitted for witness, but restore to the King, or the Lord of the Soyl *Helfeng*. \* Who shall kill a man in Orders, or malign him, let him make him amends as is right, and the amends of the Altar according to the dignity of his Order, to the King or Lord, sufficient breach of the peace, or deny it with full purgation [*Ple-na lada neget.*] If any man guilty of death desires confession, let it never be denied him; but if any man shall do it, let him pay the King one hundred and twenty shillings, or swear with five men that he did it not. If a free man work upon Holy days, let him amend his *helfeng*, and at least diligently make composition with the Lord. If any man by force holds the Rectitudes of God, [*Rectitudines Dei*] let a Dane pay *lahite*, an Englishman, *full witan*, or deny it with eleven; \* if he should there wound any man, let him amend this, and restore *full witan*, and redeem his hand of the Bishop, or lose it: If he kill a man, let him be outlawed, and every man that desires right, follow him with clamor; if it comes to pass that he be killed by this, that he refused right, if this thing be verified, let him be unrevenged. He who shall make a breach of his Order, let him amend it according to the dignity of the Order, *wera, Wita, Labitta*, \* and with all mercy. Let every widow be without a husband twelve months, afterwards she may choose whom she will; and if within a year she take a husband, let her lose her *Morgengifan*, \* and all her money which she had from her first husband, and let her husband forfeit to the King the price of his head, or to whom the King shall grant it. If a man unjustly hold a fugitive of God, let him restore him to right, and pay to him whose he shall be, and satisfy the King according to *Le-gergild*. If any man hath a man excommunicated, or keep him outlawed, and

Cap. II.  
\* Laying his hand upon the book, I think.

\* Neither Mr. Lambert nor Whelock give any construction of *Helfeng*, that I can finde.

\* Or twelve in Mr. Seldens Mf. and Mr. Whelock.

\* *Lastita*, Mr. Seldens & Mr. Whelock Mf.

\* Dower.

and all his forgiveness, and all amendment, commonly made better by Christ and the King, is utterly lost, wheresoever the Law of God shall be refused to be justly kept, according to the word of the Bishop, and it will be expedient that he be compelled by the Secular power. Because Justice and Secular distinction are necessary for the most part in Divine Laws and Secular Institutes, for that otherwise many men cannot be recalled from their ill ways, many will not be inclined to the worship of God, and observance of the Law, from whence by the much infesting of ill men, it is provided for the profitable dispensation of peace, that the more weighty pleas, and things more to be punished, be brought to Justice alone, or the mercy of the Prince, that pardon may be more abundantly had to men desiring it, and punishment to sinners; but in causes which may be amended, for the compassion of the Saints it is permitted, that the earthly Lords, by their leave, may presume to take pecuniary amends according to the Law of the Countrey.

*Of the kindes of Causes.*

Cap. 21.

There are also some kindes of Causes put before, as we have said, to be more freely expedited, in the amendment of which, the King does more particularly communicate wheresoever they are done in Divine or Secular things over Kings men, and Ecclesiastical, and of Barons men, and he hath totally or particularly \* *acefalos, & pauperes, sine soham*, of which are Adultery, Fornication, homicide in a Church, breach of the peace, or order, or Christianity or Legality, if it be needful to be done by the Secular power, that right may be done.

\* Or, *acephalos*.

*De Christiana consuetudine locutionum secundum quod sunt.*

64.

Towards the latter end interline 25. and end, A Priest who leads a regular life, in a simple accusation, may swear alone, in a threefold, with two of his Order; a Deacon in a simple compellation, may accompany himself with two Deacons; in a threefold with six. A Countrey Priest may purge himself as a regular Deacon; a Priest accused by his Bishop or Archdeacon, may swear himself the sixth of lawful Priests, as they are prepared at Mass.

*Of killing a Minister of the Altar.*

66.

If any should kill a Minister of the Altar, let him be outlawed before God and man, unless he repent with worthy satisfaction, and justly compound with his parents, or thoroughly deny it with purgation of his head; \* and begin this within thirty nights before God and man, above all he hath. If any Minister of the Altar kill any man, or if it be extraordinarily declared by bad actions, let him be both deprived of his Order, and go on Pilgrimage as the Pope shall enjoin him, and amend the work: But if he will purge himself, he may do it triply, but unless he shall begin this within thirty nights, let him be outlawed before God and men. If any man any ways afflict any man Ordained, with stripes, or bonds, let him make him amends as is meet, and to the Bishop the amends of the Altar according to the dignity of his Order, to the King or Lords, sufficient breach of the Kings peace; \* or deny it with sufficient purgation. \* If any man condemned to death, desires to be confessed, let it never be denied him; but if any man should deny him, let him give the King in satisfaction one hundred shillings, or swear with six men that he did not do it. If any man by force takes away Gods rights, let a Dane amend with *Lab siht*, full Wytam with an Englishman, or thus deny it, let him take eleven, and he be the twelfth, &c.

\* *Werilada*.

\* *Mundbrecho*.  
\* *Plenlada*.



Cap. 73.

Of Homicides by men Ordained.

If a Bishop kill a man, let it be recorded, and let him repent twelve years, seven years in bread and water, and five let him fast three days in a week, and on others let him use common sustenance. If a Priest kill a man, or a Monk, let him lose his Order, and repent ten years, six in bread and water, and four let him fast three days in a week, on others let him use his meat. If a Presbyter wound a man, let him fast one hundred days. If a Deacon kill a man, let him be degraded, and repent seven years, four in bread and water, and three let him fast three days in a week, upon other let him use common meat. If a Clerk shall kill a man, let him repent six years, four in bread and water, two years, three days in the week. If a Laick kill a man, let him repent five years, three in bread and water, and two years let him fast three days in the week. If a man kill a man in Orders, or his neighbor, let him depart out of his Countrey, and go to Rome, and make the Pope and his Council, let him in like maner repent of Adultery, or Fornication, or lying with a Nun.

*These Laws are likewise set out by Mr. Abraham Whelock in the Appendix to his History of Bede.*

Sir Ed. Coke, Candrys Case, says Henry the first, did Ordain Anno 16. Regni sui, as well in regard of his Ecclesiastical as Regal power, that whensoever the Abbot of Reading shall die, that all the Possessions do remain entire and free. But how this should make any thing for the Kings Ecclesiastical Right in all Cases I do not understand, for this Ordinance was only concerning the Possessions of the Abbey, and it is no Question but all the Bishopricks as well as Abbeyes, were originally of the Kings foundation, and it appears by the Margent, that the King was the particular Founder of this Abby; what then hinders but that the King might dispose of the Revenues as he should think fit, without having any Ghostly power in him.

### Ecclesiastical Laws made by Henry the third.

*Magna Charta.*

Cap. 1.

First we have granted to God, and by this our present Charter have confirmed for us and our heirs for ever, that the Church of England shall be free, and shall enjoy all her whole Rights and Liberties inviolable.

Cap. 38.  
According to Sir Edward Coke, Inst. 2. yet the Statute-book in large divides this Act but into thirty seven Chapters.

Relieves to all Archbishops, Bishops, Abbots, Priors, Templars, Hospitallers, and all persons Ecclesiastical, all their free Liberties which they have had in time passed: and all these Customs and Liberties aforesaid, which we have granted to be holden within this Realm, as much as appertains to us and our heirs, we shall observe. And all men as well Spiritual as Temporal (as much as in them is) shall observe the same against all persons likewise. And for this our Gift and Grant of these Liberties, and of other contained in our Charter of Liberties of our Forefathers, Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and other our Subjects have given to us the fifteenth part of their moveables; and we have granted to them on the other part, that neither we nor our heirs, shall procure or do any thing, whereby the Liberty in this Charter contained shall be infringed or broken: And if any thing be procured by any person, contrary to the premisses, it shall be of no force nor effect.

In

*In the Reign of Hen. 3. Cawdries Case.*

3 H. 3. 111.  
Prob. 13.  
4 H. 3. 8cc.

In all the time of Henry 3. and his Progenitors Kings of England, and ever since, if any man did sue afore any Judge Ecclesiastical within the Realm, for any thing whereof that Court by allowance and custom had not any lawful cognisance, the King did ever by his Writ under the Great Seal prohibit them to proceed. *Ans.* It is true indeed, that not only Probate of Testaments, but Cognisance of Tythes, Granting of Letters of Administration, Mortuaries, Pensions, Reparation of Churches, do not belong to Ecclesiastical cognisance by any Divine positive institution, but by allowance and custom of England. And if all Customs suppose some Grant originally from Supreme humane Powers, then what hinders but that the King might prohibit any Judge Ecclesiastical within the Realm, for any thing whereof that Court by allowance and custom had not lawful cognisance: for, *Cujus est velle, ejus est nolle.* And if the suggestion made to the King, whereupon the Prohibition was grounded, were after found untrue, then the King by his Writ of Consultation under the Great Seal, did allow and permit them to proceed. Also in all the Reign of H. 3. and his Progenitors Kings of England, if any Issue were joyned upon Loyalty of Marriage, General Bastardy, or such like, the King did ever write to the Bishop of the Diocese, as Mediate Officer and Minister of his Court, to certify the Loyalty of the Marriage, Bastardy, or such like: All which prove that those Courts were under the Kings jurisdiction and commandment.

Plea.

It is true, that not only all Courts, and planting of Christianity, were originally by the Kings command or permission, but the persons of all men within the Realm are in his power: And Marriage, and Bastardy being so essential, and whereupon the strength of mens estates and inheritances do depend, what hinders the King to write to the Bishop, to certify the Loyalty of the Marriage? And if it pleases him to do it as his mediate officer, who shall contradict it? Well, let it be granted, the Kings of England, in cases of Bastardy and Loyal Matrimony, have written to the Bishop of the Diocese as his mediate officer, yet it will not follow that the Bishop is the Kings mediate officer in all things and cases which relate to his Episcopal function and jurisdiction.

### Ecclesiastical Laws made by Edward the First.

**T**He King willeth that the peace of the holy Church be maintained in all points, and that Religious Houses shall not be overcharged, nor any Purveyance be made of any Prelate, without the owners consent. They who shall offend, and be thereof attainted, shall be committed to the Kings prison, and after shall make fine and be punished according to the quantity and manner of the trespass, and after as the King in his Court shall think fit, &c.

Stat. West.  
an. 3. Ed. 1.  
1275.

It is provided also, That when any Clerk is taken for guilty of felony, and is demanded by the Ordinary, he shall be delivered to him according to the privilege of the holy Church, on such peril as belongeth to it after the custom aforesaid used. And the King admonisheth the Prelates, and enjoineth them upon the faith that they owe to him, and for the common profit and peace of the Realm, that they which be indicted of such offences by solemn Inquest of lawful men in the Kings Court, in no manner shall be delivered without due purgation, so that the King shall not need to provide any other remedy therein.

Cap. 4.



The Statute of *Circumspecte agatis*, made 13 Ed. 1. 1285.

Cap. 1.

*Certain Cases wherein the Kings Prohibition doth not lie.*

The King to his Judges sendeth greeting. Use your selves circumspectly in all matters concerning the Bishop of *Norwich* and his Clergy, not punishing them if they hold plea in Court Christian of such things as be meerly Spiritual, that is to wit, of Penance enjoined by Prelates for deadly sin, of Fornication, Avowtry, and such like, for the which sometimes corporal penance, and sometime pecuniary is enjoined, specially if a Freeman be convict of such things. As also Prelates do punish for leaving the Churchyard unclosed, or for that the Church is uncovered, or not conveniently decked, in which cases none other penance can be enjoined but pecuniary.

*Item*, If a Parson demand of his Parishioners, Oblations or Tithes due and accustomed, or if any Parson do sue against another Parson for Tithes greater or smaller, so that the fourth part of the value of the benefits be not demanded.

*Item*, If a Parson demand Mortuaries, in places where a Mortuary hath been used to be given.

*Item*, If a Prelate of a Church, or a Patron demand of a Parson a Pension due to him, All such demands are to be made in a Spiritual Court. And for laying violent hands on a Clerk, and in case of Defamation, it hath been granted already that it shall be tryed in a Spiritual Court, when money is not demanded, but a thing done for punishment of sin, and likewise for the breaking of an Oath. In all cases afore-rehearsed, the Spiritual Judge shall have power to take knowledge, notwithstanding the Kings Prohibition.

Cap. 1.

*Statutum de asportatis Religioforum*, made Anno 35. Ed. 1. 1307.

Of late it came to the knowledge of our Lord the King, by the grievous complaint of the Honorable persons, Lords, and other Noblemen of his Realm, That whereas Monasteries, Priories, and other Religious Houses were founded to the honor and glory of God, and the advancement of the Holy Church, by the King and his Progenitors, and by the said Noblemen and their Ancestors, and a very great portion of Lands and Tenements have been given by them to the said Monasteries, Priories, and Houses, and the Religious men serving God in them, to the intent that Clerks and Laymen might be admitted in such Monasteries, Priories, and Religious Houses, according to their sufficient ability, and that sick and feeble men might be maintained, Hospitality, Alms-giving, and other charitable deeds might be done, and that in them prayers might be said for the souls of the said Founders and their heirs: The Abbots, Priors, and Governots of the said Houses, and certain Aliens their Superiors, as the Abbots and Priors of *Cistercienses*, and *Promonstratenses*, and of the Order of *S. Augustine* and *S. Benedict*, and many more of other Religion and Order, have as their own pleasures set divers insupportable tallages, payments and impositions upon every of the said Monasteries and Houses in subjection unto them in *England*, *Ireland*, *Scotland* and *Wales*, without the privity of our Lord the King and his Nobility, contrary to the laws and customs of the said Realm, and thereby the number of the said Religious persons, and other

other servants in the said Houses and Religious places being oppressed by such tallages, payments and impositions, the service of God is diminished, Alms be not given to the poor, the sick and feeble; the healths of the living, and the souls of the dead be miserably defrauded; Hospitality, almsgiving, and other godly deeds do cease. And so that which in times past was charitably given to godly uses, and to the increase of the service of God, is now converted to an evil end; by permission whereof there grows great scandal to the people, and infinite losses and disheritances are like to ensue to the Founders of the said Houses, and their Heirs, unless speedy and sufficient remedy be provided to redress so many and grievous detriments.

Wherefore our Lord the King, considering that it would be very prejudicial to him and his people, if he should any longer suffer so great losses and injuries to be winked at: And therefore being willing to maintain and defend the Monasteries, Priories, and other Religious houses erected in his Kingdom, and in all Lands subject to his dominion, and from henceforth to provide sufficient remedy to reform such oppressions, as he is bound: By the counsel of his Earls, Barons, Great men, and other Nobles of his Kingdom, in his Parliament holden at *Westminster* in the 35. year of his reign, hath ordained and enacted,

*Religious persons shall send nothing to their Superiors beyond the Sea.*

Cap. 2.

That no Abbot, Prior, Master, Warden, or any other Religious person of whatsoever condition, state or religion he be, being under the Kings power or jurisdiction, shall by himself, or by merchants or others, secretly or openly, by any device or means, carry or send, or by any other means cause to be sent any Tax imposed by the Abbots, Priors, Masters or Wardens of Religious houses their Superiors, or assessed amongst themselves, out of the Kingdom and his dominion, under the name of a rent, tallage, or any kind of imposition, or otherwise by way of exchange, mutual sale, or other contract, however it may be termed. Neither shall depart into any other country for visitation, or upon any other colour, by that means to carry the goods of their Monasteries and Houses out of the Kingdom and Dominion aforesaid. And if any will presume to offend this present Statute, he shall be grievously punished according to the quality of his offence, and according to his contempt of the Kings prohibition.

*No Impositions shall be taxed by Priors Aliens.*

3.

Moreover, our Lord the King doth inhibit all and singular Abbots, Priors, Masters and Governors of Religious houses and places, being Aliens, to whose authority, subjection and obedience, the Houses of the same Orders in his kingdom and dominion be subject; that they do not at any time hereafter impose, or by any means assess any tallages, payments, charges, or other burdens whatsoever, upon the Monasteries, Priories, or other Religious houses in subjection to them (as is aforesaid) and that upon pain of all they have, or may forfeit.

*By whom the Common Seal of an Abbey shall be kept, and how used.*

4.

And further, our Lord the King hath ordained and established, that the Abbots of the Orders of *Cisterciensis*, and *Præmonstratensis*, and other Religious Orders, whose Seal hath heretofore been used to remain only



in the custody of the Abbot, and not of the Covent; shall hereafter have a Common Seal, and that shall remain in the custody of the Prior of the Monastery or House, and four of the most worthy and discreet men of the Covent of the same House, to be laid up in safe keeping under the Private Seal of the Abbot of the same House: So that the Abbot or Prior which does govern the House, shall be able of himself to establish nothing, though heretofore it hath been otherwise used. And if it fortune hereafter, that writings of Obligations, Donations, Purchases, Sales, Alienations, or of any other Contracts, be sealed with any other Seal then such a Common Seal kept as is aforesaid, they shall be adjudged void and of no force in Law. But it is not the meaning of our Lord the King, to exclude the Abbots, Priors, and other Religious Aliens, by the Ordinances and Statutes aforesaid, from executing the office of Visitation in his Kingdom and Dominion; but they may visit at their pleasures by themselves or others the Monasteries and other places in his Kingdom and Dominion in subjection to them, according to the duty of their office, in these things only that belong to Regular observation, and the discipline of their Order. Provided, that they which shall execute this office of Visitation, shall carry, or cause to be carried out of his Kingdom or Dominion, none of the goods or things of such Monasteries, Priors, and Houses, saving only their reasonable and competent charges.

*Stat. Ne Rector prosternat arbores in Cemiterio, made 35 Ed. 1.*

*Anno Dom. 1307.*

*In what cases, and by whom, Trees may be felled in a Churchyard.*

Because we do understand, that controversies do oftentimes grow between Parsons of Churches and their Parishioners, touching Trees growing in the Church-yard, both of them pretending that they do belong unto themselves: We have thought good rather to decide this controversie by writing then by Statute. Forasmuch as a Church-yard that is dedicated, is the soil of a Church, and whatsoever is plaated belongs to the soil, it must needs follow, that those Trees which be growing in the Church-yard, are to be reckoned amongst the goods of the Church, the which Laymen have no authority to dispose; but, as the holy Scripture does testifie, the charge of them is committed only to Priests to be disposed of. And yet seeing those Trees be often planted to defend the force of the wind from hurting of the Church; We do prohibit the Parsons of the Church, that they do not presume to fell them down unadvisedly, but when the Chancel of the church does want necessary reparations: Neither shall they be converted.

*In the Reign of Edward the First.*

*30 E. 3. li. Aff.  
Pl. 19, &c.*

A Bull of Excommunication brought by one Subject against another, was adjudged by the Common law, Treason against the King, his crown and dignity.

*Par. 2. 19 E. 1.  
Quare non admittit.*

*Edw. 1.* seized the lands of the Archbishop of *York*, because he refused to admit his Clerk, but pleaded that the Bishop of *Rome* long time before provided to the said Church.

*Para. 3. Stat.  
de Biga.  
4 Ed. 1.*

The King and his Council did not receive the constitution of the Bishop of *Rome* at *Lions*, which excluded men twice married, or *Bigami*, from all privileges of Clergy.

*It*

It was declared, that the holy Church of *England* was founded in the state of Prelacy within this Realm of *England*; by the King and his progenitors; And that the Bishop of *Rome* usurping the seigniorie of such Benefices, &c. that the said oppressions, grievances and damages in this Realm, from thenceforth shall not be suffered. Stat. 25 Ed. 1. Carlisle.

*Articuli Cleri, made at Lincoln, Anno 9 E. 2. & Anno Dom. 1315.*

The King to all whom &c. sendeth greeting. Understand ye, that whereas of late in times of our Progenitors sometimes Kings of *England*, in divers their Parliaments, and likewise after that we had undertaken the governance of the Realm, in our Parliaments many Articles containing divers grievances (committed against the Church of *England*, the Prelates and Clergy) were propounded by the Prelates and Clerks of our Realm, and further great instance was made, that convenient remedy might be provided therein: And of late in our Parliament holden at *Lincoln* the ninth year of our reign, we caused the Articles underwritten, with certain Answers made to some of them heretofore to be rehearsed before our Council, and made certain Answers to be corrected, and to the residue of the Articles underwritten Answers were made by us and our Council; of which said Articles, with the Answers of the same, the tenors here ensue.

*No Prohibition shall be granted where Tithes be demanded, but where money for them.* Cap. 1.

First, whereas Laymen do purchase Prohibitions generally upon Tithes, Obventions, Oblations, Mortuaries, Redemption of penance, violent laying hands on Clerks or Converts, and in cases of Defamation, in which cases Spiritual penance ought to be enjoined: The King doth answer to this Article, That in Tithes, Oblations, Obventions, Mortuaries, (when they are propounded under these names) the Kings prohibition shall hold no place, although for the long withholding of the same, the money may be esteemed at a sum certain. But if a Clerk or a Religious man do sell his Tithes being gathered in his barn, or elsewhere, to any man for money, if the money be not demanded before a Spiritual Judge, the Kings Prohibition shall lie; for by the sale, the spiritual goods are made temporal, and the Tithes are turned into chattels. *Regist. fol. 34. 39. v. N. B. f. 3032. Fitz. N. B. fo. 40. &c. & Rast. pla. fo. 484, &c.*

*Debate upon the right of Tithes exceeding the fourth part. Enjoining Penance corporal, or pecuniary.* Cap. 2.

Also if debate do arise upon the right of Tithes, having his original from the right of Patronage, and the quantity of the same Tithes do come unto the fourth part of the goods of the Church, the Kings Prohibition shall hold place, if the case come before a Judge Spiritual. Also if a Prelate enjoin a penance pecuniary to a man for his offence, and if it be demanded, the Kings Prohibition shall hold place: But if Prelates enjoin a penance corporal, and they which be so punished will redeem upon their own accord such penances by money, if money be demanded before a Judge Spiritual, the Kings prohibition shall hold no place. Laying



cap. 3.

*Laying violent hands upon a Clerk. Excommunication for Penance corporal.*

Moreover, if any lay violent hands upon a Clerk, the amends for the Peace broken shall be before the King. And for the Excommunication before a Prelate, that Penance corporal may be enjoined, which if the offender will redeem of his own good will, by giving money to the Prelate, or to the party grieved, it shall be required before the Prelate, and the Kings Prohibition shall not lie.

*Prelates may correct for Defamation.*

In Defamations also Prelates shall correct in manner aforesaid, the Kings Prohibition notwithstanding; first enjoining a penance corporal, which if the offender will redeem, the Prelate may freely receive the money, though the Kings Prohibition be granted.

*No Prohibition where the Tithe is demanded of a new Mill.*

Also if any one do erect in his ground a Mill of new, and after the Parson of the same place demandeth Tithe for the same, the Kings Prohibition doth issue in this form; *Quia de tali molendino hactenus decima non fuerunt soluta, prohibemus, &c. Et sententiam Excommunicationis, si quam hac occasione promulgaveritis, revocetis omnino.* The Answer. In such case the Kings Prohibition was never granted by the Kings assent, nor never shall, which hath decreed that it shall not hereafter lie in such cases.

*Where a Suit for one offence may be prosecuted both in Court Spiritual and Temporal.*

Also if any cause or matter, the knowledge whereof belongeth to a Court Spiritual, and shall be definitively determined before a Judge Spiritual, and does pass into a Judgment, and shall not be suspended by an Appeal; and after if upon the same thing a Question is moved before a Temporal Judge between the same parties, and it be proved by witnesses or instruments, such an Exception is not to be admitted in a Temporal Court. The Answer. When any one case is debated before Judges Spiritual and Temporal, as above appeareth (upon the case of laying violent hands upon a Clerk) it is thought notwithstanding the Spiritual Judgment, the Kings Court shall discuss the same matter, as the party shall think expedient for himself.

*In what case only the Kings Letter shall be sent to discharge an Excommunication.*

Also the Kings Letter directed unto Ordinaries, that have wrapped those that be in subjection unto them in the sentence of Excommunication, that they should assail them by a certain day, or else that they do appear and shew wherefore they have excommunicated them. The Answer. The King decreeth, that hereafter no such Letter shall be suffered to go forth, but in case where it is found that the Kings liberty is prejudiced by such Excommunication.

*Clerks in the Kings service shall be discharged of their Residence, but shall be corrected by their Ordinary.*

Also Barons of the Kings Exchequer claiming by their privilege, that they ought to make answer to no complainant out of the same place, extend the same privilege unto the Clerks abiding there, called to Orders, or unto Residence, and inhibit Ordinaries, that by no means, or for any cause (so long as they be in the Exchequer, or Kings service) that they call not them

to

to Judgment. *Ans.* It pleaseth our Lord the King, that such Clerks as attend in this service, if they offend, shall be correct by their Ordinaries, like as other; but so long as they are occupied about the Exchequer, they shall not be bound to keep residence in their Churches. *This is added of new by the Kings Council.* The King and his Ancestors, since time out of mind, have used that Clerks which are employed in his service, during such time as they are in his service shall not be compelled to keep residence at their Benefices: And such things as be thought necessary for the King and Commonwealth, ought not to be said to be prejudicial to the liberty of the Church.

*Distresses shall not be taken in the High-ways, nor in the antient Fees of the Church.*

Cap. 9.

Also the Kings Officers, as Sheriffs and other, do enter into the Fees of the Church to take Distresses; and sometimes they take the Parsons beasts in the High-way, where they have nothing but the land belonging to the Church. *The Answer.* The Kings pleasure is, that from henceforth such Distresses shall neither be taken in the Kings High-way, nor in the Fees wherewith Churches in times past have been endowed: Nevertheless he willet Distresses to be taken in possession of the Church newly purchased by Ecclesiastical persons.

*They that abjure the Realm, shall be in peace as long as they be in the Church or High-way.*

to.

Also where some flying unto the Church, abjure the Realm according to the custom of the Realm, and Laymen or their enemies do pursue them and pluck them from the Kings High-way, and they be hanged or headed; and whilst they be in the Church, are kept in the Church-yard with armed men, and sometime in the Church so straitly, that they cannot depart from the hallowed ground to empty their belly, and cannot be suffered to have necessities brought unto them for their living. *The Answer.* They that abjure the Realm, so long as they be in the common way, shall be in the Kings peace, nor ought to be disturbed of any man; and when they be in the Church, their Keepers ought not to abide in the Church-yard, except necessity or peril of escape do require so: And as long as they be in the Church, they shall not be compelled to flee away, but they shall have necessities for their living, and may go forth to empty their belly. And the Kings pleasure is, that Thieves or Appellors (whensoever they will) may confess their offences unto Priests; but let the Confessors beware that they do not erroneously inform such Appellors.

*Religious Houses shall not be charged by compulsion, with Corodies, Pensions, Resort, or taking in of Horses and Carts.*

11.]

Also it is desired, that our Lord the King, and the Great men of the Realm, do not charge Religious houses or Spiritual persons for Corodies, Pensions, or Sojourning in Religious houses, and other places of the church, or with taking up of horses or carts, whereby such houses are impoverished, and Gods service diminished, and by reason of such charges, Priests and other Ministers of the Church deputed unto Divine service, are oftentimes compelled to depart from the places aforesaid. *The Answer.* The Kings pleasure is, that upon the contents in their Petition from henceforth they shall not be unduly charged: And if the contrary be done by Great men or other, they



they shall have remedy after the form of the Statutes made in the time of King Edward Father to the King that now is. And the like remedy shall be done for corodies and pensions exacted by compulsion, whereof no mention is made in the said Statutes.

Cap. 12.

*A Clerk excommunicated, may be taken out of the Parish where he dwelleth.*

Also if any of the Kings tenure be called before their Ordinaries out of the Parish where they continue; if they be excommunicate for their manifest contumacy, and after forty days a Writ goeth out to take them, and they pretend their priviledge that they ought not to be cited out of their Town and Parish where their dwelling is, and so the Kings Writ that went out to take them is denied. *The Answer.* It was never yet denied, nor shall be hereafter.

13.

*The examination of a Parson presented to a Benefice, belongeth to a Spiritual Judge.*

Also it is desired that Spiritual persons, whom our Lord the King doth present unto Benefices of the Church (if the Bishop will not admit them either for lack of learning, or for other cause reasonable) may not be under examination of Lay-persons in the cases aforesaid, as it is now attempted contrary to the Decrees canonical, but that they may sue unto a Spiritual Judge for remedy as right shall require. *The Answer.* Of the ability of a Parson presented unto a Benefice of the Church, the examination belongs to a Spiritual Judge, and so it hath been used heretofore, and shall be hereafter.

14.

*There shall be a free election of the Dignities of the Church.*

Also if any Dignity be vacant, where election is to be made, it is moved that the Electors may freely make their election without fear of any Power temporal, and that all prayers and oppressions shall in this behalf cease. *Ans.* They shall be made free according to the form of Statutes & Ordinaunces.

15.

*A Clerk fleeing into the Church for Felony, shall not be compelled to abjure.*

Moreover, though a Clerk ought not to be judged before a Temporal Judge, nor any thing may be done against him that concerneth life or member; nevertheless Temporal Judges cause that Clerks fleeing unto the Church, and peradventure confessing their offences, do abjure the Realm, and for the same cause admit their abjurations, although hereupon they cannot be their Judges; and so power is wrongfully given to Lay-persons to put to death such Clerks, if such persons chance to be found within the Realm after their abjuration: The Prelates and Clergy desire such remedy to be provided herein, that the immunity or priviledge of the Church, and Spiritual persons, may be saved and unbroken. *The Answer.* A Clerk fleeing to the Church for felony, to obtain the priviledge of the Church, if he affirm himself to be a Clerk, he shall not be compelled to abjure the Realm, but yielding himself to the Law of the Realm, shall enjoy the priviledge of the Church according to the laudable custom of the Realm heretofore used.

16.

*The priviledge of the Church being demanded by the Ordinary, shall not be denied to a Clerk that hath confessed Felony.*

Also notwithstanding that a confession made before him that is not lawful Judge thereof, is not sufficient whereon Process may be awarded, or

or sentence given, yet some temporal Judges (though they have been constantly de fired thereunto); do not deliver to their Ordinaries according to the premises, such Clerks as confess before them their hainous offences, as Theft, Robbery, and Murder; but admit their Accusation, which commonly they call an Appeal, albeit to this respect they be not of their Court, nor can be judged or condemned before them upon their own confession, without breaking of the Churches priviledges. *The answer*, the priviledge of the Church being demanded in due form by the Ordinary, shall not be denied unto the Appealer as to a Clerk: We desiring to provide for the state of the Church of *England*, and for the tranquillity and quiet of the Prelates and Clergy aforesaid, as far forth as we lawfully may do to the honor of God, and the emendation of the Church, Prelates and Clergy of the same, ratifying, confirming, and approving, all and every of the Articles aforesaid, with all and every of the Answers made and contained in the same, do grant and command them to be kept firmly, and observed for ever, willing and granting for us and our heirs, that the aforesaid Prelates and Clergy, and their successors, shall use, execute and practice for ever, the jurisdiction of the Church in the premises, after the tenor of the answers aforesaid, without quarrel, inquieting, or vexation of our heirs, or any of our Officers, whatsoever they be.

*In the Reign of King Edward the second.*

Albeit the Ordinance of *Circumspectè agatis*, made in the 13. of *Ed. 1.* *Caudrés Case* and by the general allowance and usage, the Ecclesiastical Court held Plea of Tithes, Obventions, Oblations, Mortuaries, Redemptions of Penance, laying of violent hands upon a Clerk, Defamations, &c. Yet did not the Clergy think themselves assured nor quiet from Prohibitions Purchased by Subjects until *Ed. 2.* by his Letters Partents under the Broad Seal; in and by consent of Parliament, upon Petition of the Clergy, had granted unto them to have Jurisdiction in those cases. The King in Parliament holden in the ninth year of his Reign, after particular answers made to those Petitions, concerning the matters aforesaid, does grant and give his Royal assent in these words.

We desiring as much as of right we may, to provide for the state of the Church of *England*, and the tranquillity of the Prelates of the said Clergy, to the honour of God, and the amendment of the state of the said Church, and of the Prelates and Clergy, ratifying and approving all and singular the said answers, which appears in the said Act, and all and singular things in the said answers contained, we do for us and our heirs grant and command, that the same be inviolably kept for ever: Willing and granting for us and our heirs, that the said Prelates and Clergy, and successors for ever, do exercise Ecclesiastical Jurisdiction in the premises, according to the tenor of the said answer.

*Cap. 21*

*A Satute of the Clergy made Anno 18. Ed. 3. Anno Dom. 1344.*

*Bigamy shall be tryed by the Ordinary, and not by Inquest.*

*Item.* If any Clerk be arraigned before our Justices, at our Suit, or the Suit of the party, and the Clerk holdeth him to his Clergy, alleading that he ought not before them thereupon to answer, and if any man for us, or for the same party, will suggest that he hath married two Wives, or one Widow, that upon the same, the Justices shall not have cognizance or power to

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try the Bigamy by Inquest, or in other manner; but it shall be sent to the Spiritual Court, as hath been done in times past, in case of Bastardy, and till the Certificate be made by the Ordinary, the party in whom the Bigamy is alleadged by the words aforesaid, or in other manner, shall abide in prison unless he be mainpernable.

Cap. 3.

*Item.* If Prelates, Clerks beneficed, or Religious people which have purchased Lands, and the same have put to Mortmain, be impeached upon the same before our Justices, and they shew our Charter of Licence, and Proces thereupon made by an Inquest of *ad quod Damnum*, or of our Grace, or by Fine, they shall be freely let in peace, without being further Impeached for the same Purchase; and in case they cannot sufficiently shew that they have entred by due Proces after Licence to them granted, in general or in special, that they shall be well received to make a convenient Fine for the same, and that the inquiry of this Article shall wholly cease, according to the accord comprized in this Parliament.

4.

*Item.* That the Statutes touching the Purveiances of us and our son, made in times past by us and our Progenitors, for the people of holy Church, be holden in all parts: And that in the Commissions to be made upon such Purveiances, the Fees of holy Church shall be excepted in every place where they be found.

5.

*Item.* That no Prohibition shall be awarded out of the Chancery, but in case where we have the cognizance, and of right ought to have.

6.

*Item.* Whereas Commissions be newly made to divers Justices, that they shall make enquiries upon Judges of the holy Church, whether they made just proces or excessive in Causes Testamentary or other, which notoriously pertaineth to the cognizance of holy Church, the said Justices have enquired, and caused to be Indicted, Judges of the holy Church, in blemishing of the Franchise of the holy Church: That such Commissions be repealed, and from henceforth defended, saving the Article in *Eyre*, such as ought to be.

*No Scire facias shall be awarded against a Clerk for Tythes.*

7.

*Item.* Whereas Writs of *Scire facias* have been granted to warn Prelates, Religious, and other Clerks, to answer Dismes in our Chancery, and to shew if they have any thing, or can any thing say, wherefore such Dismes ought not to be restored to the said Demandants, and to answer as well to us, as to the party to such Dismes: That such Writs from henceforth be not granted, and that the proces hanging upon such Writs be annulled and repealed, and that the parties be dismissed from the Secular Judges of such manner of Pleas; saving to us our right, such as we and our ancestors have had, and were wont to have of reason. In witness whereof, at the request of the said Prelates, to these present Letters we have set our Seal: Dated at London this 8<sup>th</sup> of July, the year of our Reign of England 18. of France the 5<sup>th</sup>.

*In the Reign of Ed. 3.*

16 Ed. 3. tit.  
Excom. 4.

An Excommunication by the Archbishop, albeit it be disannulled by the Pope or his Legats, is to be allowed, neither ought the Judges to give any allowance of any such sentence of the Pope or his Legat.

In the Reign  
of Ed. 3.

It is often resolved that all the Bishopricks within England were founded by the Kings Progenitors, and therefore the Advousons of them all belong to the King, and at first they were Donative; and if that any incumbent of any Church with cure die, if the Patron present not within six moneths, the

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the Bishop of that Dioces ought to collate, to the end the Cure may not be destitute of a Pastor: if he be negligent by the space of six moneths, the Metropolitan of that Dioces shall confer one to that Church; and if he also leave the Church destitute by the space of six moneths, then the common Law gives to the King as Supream within his own Kingdom, and not to the Bishop of Rome, power to provide a competent Pastor for that Church.

The King may not onely exempt any Ecclesiastical person from the Jurisdiction of the Ordinary, but may grant him Episcopal Jurisdiction: And thus it appears there, the King had done of ancient time to the Arch-Deacon of Richmond. *This resolution is not grounded upon any Custom or Law, but onely upon a particular fact of a King, & a facto ad jns non valet argumentum.* 17 Ed. 3. 23.

All Religious or Ecclesiastical Houses whereof the King was Founder, are by the King exempt from Ordinary Jurisdiction, and onely visitable, and corrigible by the Kings Ecclesiastical Commission. *This resolution too is onely grounded upon matter of Fact, and what man will warrant all the Facts of Kings not to be repugnant to the Laws of God and man? Yet shall not these men in other things of much less moment, allow the Kings Proclamations to be Legal, nor any thing less then the Common Law, or Acts of Parliament.* 20 E. 3. Excom. 9. 19. Ed. 3.

The Abbot of Bury was exempted from Episcopal jurisdiction, by the Kings Charter: *This is nothing neither but matter of Fact.* 20 Ed. 3. tit. Excom. 6.

The King presenteth to a Benefice, and his presentee was disturbed by one who had obtained Bulls from Rome, for which offence he was condemned to perpetual imprisonment, &c. 21 Ed. 3. 40. fol. 40.

Tithes arising out of any parish the King shall have, for that he having the Supream Ecclesiastical jurisdiction, is bound to provide a sufficient Pastor that shall have the cure of souls of that place which is not within any parish: And by the common Laws of England it is evident, that no man, unless he be Ecclesiastical, or have Ecclesiastical jurisdiction, can have inheritance of Tithes. 22 Ed. 3. l. 1. Ass. pl. 75.

The King shall present to his free chappels (in default of the Dean) by laps in respect of his supream Ecclesiastical jurisdiction. And Fitz Herbert saith that the King in that case does present by laps as Ordinary, *Fitz nat. Br. 34.* 27 Ed. 3. fol. 84.

An Excommunication under the Popes Bull, is of no force to disable any man within England; and no suit for any cause, though spiritually rising in this Realm, ought to be determined in the court of Rome. 30 Ed. 3. lib. Ass. pl. 19, &c.

In an Attachment upon a Prohibition, the Popes Bull of Excommunication of the plaintiff, was adjudged insufficient. 31 Ed. 3. tit. Excom. 6.

*Reges sacro Oleo uncti, sunt Spiritualis jurisdictionis capaces.* 33 Ed. 3. tit. Agelde Roy.

A Prior which is the Kings Debtor, and ought to have Tithes of another spiritual person, may chuse either to sue for subtraction of his Tithes in the Ecclesiastical court, or in the Exchequer, *Fitz Herbert in his N. B. fol. 30. holdeth, that before the St. 18 Ed. 3. Cap. 7. the right of Tithes were determinable at the temporal courts at the election of the party. And the courts of divers Manors of the Kings and other Lords in ancient times, had the probate of last Wills and Testaments, and it appeareth by 11 H. 7. fol. 12. That the probate of Wills and Testaments did not appertain to the Ecclesiastical courts, but that of late time they were determinable there.* 38 Ass. pl. 20.

The King by his Charter did translate Canons secular, into regular and religious persons. 38 Lib. Ass. pl. 22.

Nicholas Moris elected Abbot of Waltham, which was exempt from ordina- 45 Ed. 3. Proem 6.



ry Jurisdiction sent to *Rome* to be confirmed by the Pope, who not having regard to the said Election, gave to the said *Nicholas* the said Abby, with all the said Spiritualities, and Temporalities; the Bull was adjudged against the Laws of *England*, and the Abbot for obtaining the same, was fallen into the Kings mercy, whereupon all his Possessions were seised into the Kings hands.

49 Ed. 3.  
lib. 2. pl. 8.

Where the Abbot of *Westminster* had a Prior and Covent who were Regular, and *mort* in Law, yet the King by his Charter did divide that Corporation, and made the Prior and Covent a distinct and capable body to sue and be sued by themselves.

St. de 25 Ed. 3.  
de Previsfori-  
bus.

It was Enacted by the whole Parliament, That as well they who obtained provisions from *Rome*, as they that put them in execution should be out of the Kings Protection, and that a man might do with them as enemies to the King, &c.

St. 25. Ed. 3.

It was afterwards in open Parliament by grievous complaint of all the Commons of this Realm, shewed, that the grievances and mischiefs aforesaid did daily abound, to the great damage and destruction of this Realm, more then ever before, viz. that of late the Bishop of *Rome* by procurement of Clerks, and otherwise had reserved, and did reserve daily to his collation generally and especially, as well Archbishopricks, Abbeyes, and Priories, as all other dignities, and other benefices of *England*, which were of the Advowry of people of the holy Church, and gave the same to Aliens as well as to Citizens, and taketh of all such benefices the first fruits, and many other profits, and a great part of the treasure of this Realm was carried away, and dispended out of the Realm by the Purchasers of such graces; and also by such privy reservations, many Clerks advanced by the true Patrons, which peaceably holden their advancements by long time, were suddenly put out. Wherefore the said Commons did pray the said Sovereign the King, that since the right of the Crown of *England*, and the Law of the said Realm was such, that upon mischiefs and damages which hapned to this Realm, he ought, and was bound of the accord of his people, therefore to provide remedy and Law, &c. The said King Ed. 3. seeing the mischiefs and damage aforesaid, &c. and forasmuch as he was bound by his Oath, to see the same to be kept as a Law of this Realm, though that by sufferance and negligence it had been since attempted to the contrary; also having regard to the grievous complaints made to him by his people in divers his Parliaments holden heretofore, willing to ordain remedy for the great damage and mischiefs which had hapned, and daily did happen to the Church of *England* by the said cause, by the assent of all the great men, and the commonalty of the said Realm, to the honor of God, and profit of the said Church of *England*, and of his Realm, did order and establish, that the free election of all Archbishops, Bishops, and all other dignities and benefices eleatory in *England*, should hold from henceforth in the manner as they were granted by the Kings progenitors, and founded by the ancestors of other Lords; and that all Prelates, and other people of the holy Church, which had Advowsons of any benefices of the Kings gift, or of any of his progenitors, or of other Lords and Donors, to do divine service, and other charges thereof ordained, should have their collations and presentments freely, as they were enfeoffed by their donors, and in case that reservation, collation, or provision be made by the Court of *Rome*, of any Archbishoprick, Bishoprick, Dignity or other Benefice in disturbance of the election, collation, or presentments

ments afore said: That at the time of the avoidance, that such reservations, collations, and provisions ought to take effect, the said Ed. 3. and his heirs should have and enjoy for the same time, collations to the Archbishopricks, and other dignities elective, which is of his Avowry, such as his Progenitors had before that free election was granted, since that the elections were first granted by the Kings progenitors upon a certain form and condition, as to demand license of the King to chuse, and after the election, to have his Royal assent, and not in other manner: which condition not kept, the King ought by reason to resort to his first nature.

Upon complaint made by the great men and commons, it was assented and accorded by the King, great men and commons afore said, that all the people of the Kings Allegiance, of what condition that they be, which shall draw any out of the Realm, in plea whereof, the consueance pertaineth to the Kings Court, or of things whereof Judgement were given in the Kings Court, or which did sue in any other Court, to defeat or impeach the Judgements given in the Kings Court, should incur the danger of a *Premunire*.

St. 27 Ed. 3.

Made to confirm the Acts made the 25. and 27. years of the said Kings Reign; but those that made those good Laws against such capital offenders, were cursed, defamed, and reproved by such as maintained the usurped jurisdiction of the Church of *Rome*, against which an especial Act of Parliament was made by the King and his whole Realm, prohibiting thereby such defamations and reproofs.

St. 28 Ed. 3.

Cap. 1. 2. 3. 4.

*In the Reign of Richard the second.*

Against an Incumbent of the Church of *England*, another sueth a provision in the Court of *Rome*, and there pursueth until he recovereth the Church against the Incumbent, and afterward brought an action of account against him, as receiver of divers sums of money (which in troath were the oblations and offerings which the Incumbent had received) and the whole Court was of opinion against the Plaintiff, and thereupon he became *non suit*.

12 Rich. 2. tit. Jurisdic. 18.

It is declared by that Parliament, that the Crown of *England* hath been so free at all times, that it hath been in subjection to no Realm, but immediately subject to God, and none other, and that the same ought not in any thing touching the Regality of the same Crown, be to the Bishop of *Rome*, nor the Laws and Statutes of this Realm, by him frustrated or defeated at his will, to the perpetual destruction of the King his Sovereignty, Crown and Regality, and of all his Realm. And the Commons in that Parliament affirmed, that the things attempted by the Bishop of *Rome*, be declared against the Kings Crown, and his Regality, used and approved in the time of all his Progenitors.

St. 16 R. 2.

Cap. 5.

*In the Reign of H. 4.*

H. 4. fol. 92

It is resolved that the Popes Collector, though he hath the Popes Bull to that purpose, hath no jurisdiction within this Realm, and there the Archbishops and Bishops, &c. of this Realm, are called the Kings spiritual Judges.

By the ancient Laws Ecclesiastical of this Realm, no man could be convicted of Heresie, being high Treason against the Almighty, but by the Archbishop, and all the Clergy of that Province, and after abjured thereupon, and after that newly convicted and condemned by the Clergy of that Province, in the general council of the convocation: but the St. of a H. 4. Ca. 15. doth give the Bishop of the Dioces power to condemn a Heretick, and that before that

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Statute, he could not be committed to the secular power to be burnt, until he had once abjured, and was again relapsed to thar or some other Heresie, where-by it appeareth that the King by the consent of Parliament, directed the proceedings in the Court Ecclesiastical, in case of Heresie, and other matters more Spiritual: Well, but suppose the King did so, it proves nothing; for it is but matter of Fact: But it does not appear neither that this direction of the King by consent of Parliament, did direct the proceedings in the Court in the consue of Heresie, but onely for the punishment of Heresie adjudged in the Ecclesiastical Court; and all men know that it is the Temporal, not Ecclesiastical power, (although it may be executed, or pronounced by Ecclesiastical persons) that punisheth men for Spiritual Crimes.

*The Pope cannot alter the Laws of England.*

The Judges say that the Statutes which restrain the Popes provisions to the Benefices of the Advowsons of Spiritual men, were made, for that the Spiritual durst not in their just Cause, say against the Popes provisions: so as those Statutes were made in affirmance of the common Law.

Excommunication made by the Pope, is of no force in *England*, and the same being certified by the Pope into any Court in *England*, ought not to be allowed, neither is any Certificate of any Excommunication available in Law, but that which is made by some Bishop in *England*; for the Bishops are by the common Laws, the immediate Officers, and Ministers of Justice to the Kings Court in Causes Ecclesiastical.

If any Bishop do Excommunicate any person for a cause that belongeth not to him, the King may write to the Bishop, and command him to assoyl, and absolve the party.

If any person of Religion obtain of the Bishop of *Rome* to be exempt from obedience regular or ordinary, he is in case of a *Premunire*, which is an offence, as hath been said, *contra Regem, coronam, & dignitatem ejus*.

Upon complaint of the Commons of the horrible mischiefs, and damnable customs which there were introduced by the Church of *Rome*, that no person, Abbot or other, should have any provisions of Archbishoprick, or Bishoprick which should be void, till he had compounded with the Popes Chamber, to pay great and excessive sums of money, as well for the first frutes of the same Archbishoprick or Bishoprick, as for the other less services in the said Court, and that the said sums, or greater part thereof be paid before hand, which sums passed the double or treble of that that was accustomed of old time to be paid, &c. It was therefore Enacted, That they, and every of them that did pay greater sums then had of old time been accustomed to be paid into the said Chamber, should incur the forfeiture of as much as they may forfeit to the King.

No person, Religious or Secular, of what estate or condition that he were, by colour of any Bulls containing Priviledges, to be discharged of Tythes appertaining to Parish-Churches, Prebends, Hospitals, Vicarages Purchased before the first year of King *R. 2.* or after, nor executed, should put in execution any such Bills so Purchased, or any such Bulls to be Purchased in time to come, upon pain of a *Premunire*. In the Reign of *Hen. 5.*

In an Act of Parliament made in the third year of *Henry 5.* it is Declared, That whereas in the time of *H. 4.* father to the said King, the seventh year of his Reign, to eschew many discords and debates, and divers other mischiefs which were like to arise and happen, because of many provisions then made,

or

11 H. 4. 39.  
11 H. 4. fol. 69.  
76.

14 H. 4. fol.  
14. 67.

14 H. 4. 14.

St. 2. H. 4.  
Cap. 3.

St. 6. H. 4.  
Cap. 1.

St. 7. H. 4.  
Cap. 6.

St. 4. H. 5.  
Cap. 4.

or to be made by the Pope, and also of licence thereupon granted by the said King, among other things, it was Ordained and Established, That no such Licence, or Pardon so granted before the same Ordinance, or afterwards to be granted, shall be available to any Benefice full of any Incumbent, at the day of the date of such Licence or Pardon granted: Nevertheless, divers persons having provisions of the Pope, of divers Benefices in *England*, and elsewhere, and Licenses Royal to execute the same Provisions, have by colour of the same Provisions, Licenses and acceptations of the said Benefices, subtilly excluded divers persons of their Benefices, in which they had been incumbents by a long season, of the collation of the very Patrons Spiritual, to whom duely made to their intent, to the final destruction and enervation of the Estates of the same Incumbents. The King, willing to avoid such mischiefs, hath Ordained and Established, That all the Incumbents of every benefice of Holy Church, of the Patronage, Collation, or presentation of Spiritual Patrons, may quietly and peaceably enjoy their said Benefices, without being inquieted, molested, or any way grieved by any colour of such provisions, licencies, and acceptations; and that all licences and pardons, upon and by such provisions made in any manner, should be void and of no valour: and if any feel himself grieved, molested, or inquieted in any wise from henceforth by any, by colour of such provisions, licenses, pardons, or acceptations, that the same molesters, grievors or inquesters, and every of them, have, and incur the pains and punishments contained in the Statutes of Provisors before that time. *H. 4.*

Was made for extirpation of Heresie and Lollardy, whereby full power and authority was given to the Justices of Peace, and Justices of Assize, to enquire of those that hold Errors, Heresies, or Lollardry, and of their maintainers, &c. and that the Sheriff or other Officer, &c. may Arrest and apprehend them. A man should undertake a very hard task, that goes about to maintain, that all Humane Laws did never transgress their limits, nor encroach upon things that were not properly in their consueance; and this Law ill suits with the temper of these times.

*St. 2 H. 5.  
Cap. 7. Lollardry.*

The King by consent of Parliament, giveth power to Ordinaries to enquire of the Foundation, Erection, and Governance of Hospitals, other then such as be of the Kings Foundation, and thereupon to make correction and reformation, according to the Ecclesiastical Law, nor could any other Power grant such Ordinances.

*St. 2 H. 5.  
Cap. 1.*

*In the Reign of Henry the sixth.*

*8 H. 6. fol. 3.*

Excommunication made and certified by the Pope, is of no force to disable any man within *England*: and this is by the ancient Common Laws, before any Statute was made concerning forein Jurisdiction.

The King onely may grant or licence to Found a Spiritual Corporation.

*9 H. 6. fol. 16.*

The Pope wrote Letters in derogation of the King and his Regality, and the Church-men durst not speak against them; but *Humfrey Duke of Glocester*, for their safe keeping, put them into the fire.

*1 H. 6. fol. 10.*

*In*



*In the Reign of Edward the fourth.*

H. 7. fol. 20. The Pope in the Reign of King Ed. 4. granted to the Prior of St. *Fahns*, to have Sanctuary within his Priory, and this was pleaded, and claimed by the Prior; but it was resolved by the Judges, that the Pope had no power to grant any Sanctuary within this Realm, and therefore by Judgement of Law it ought to be disallowed.

Ed. 4. 9. There it appeareth that the opinion of the Kings Bench had been oftentimes, that if one Spiritual person, sueth another Spiritual person in the Court of *Rome*, for a matter Spiritual, where he may have remedy before his Ordinary, that is, of the Bishop of the Diocese within the Realm, *Quia trahit ipsum in placitum extra regnum*, incurreth the danger of a Premunire, a heinous offence, being *contra Legiantia sua debitum, in contemptum Domini Regis, & contra coronam & dignitatem suam*.

9 Ed. 4. 28. In the Kings Court of Record, where Felonies are determined, the Bishop or his Deputy ought to give his attendance, to the end that if any man that is Indicted or Arraigned for Felony, do demand the benefit of his Clergy, that the Ordinary may inform the Court of his sufficiency, or insufficiency, that is, whether he can read as a Clerk, or not; whereof notwithstanding the Ordinary is not to judge, but a Minister to the Kings Court; and the Judges of that Court are to judge of the sufficiency or insufficiency of the party, whatsoever the Ordinary do inform them, and upon due examination of the party, may give judgement above the Ordinaries information: For the Kings Judges, are Judges of the Cause; whether the Ordinary be a Judge of *Legit*, or *non Legit*, matters not much: for if he be Judge, or Minister, no doubt but he is the Kings Judge, or Minister. And I my self have seen Chief Justice *Littleton* overrule the Ordinary in the Case of one *Brudbank*, after the Ordinaries Deputy had pronounced *legit ut Clericus*, and give sentence of death upon him for his *non legit*, and he was hanged.

22 Ed. 4. fol. 46. The Popes Excommunication is of no force within the Kingdom of England.

In the Reign of King Ed. 4. a Legat came from the Pope to *Callis*, to have come into *England*, but the King and his Council would not let him come into *England*, until he had taken an Oath that he should attempt nothing against the King or his Crown: And so the like was done to another of the Popes Legates. And this is so reported, 1 H. 7. fol. 10.

*In the Reign of Richard the third.*

It is resolved by the Judges, that a Judgement of Excommunication in the Church of *Rome*, shall not prejudice any man within *England* at the Common Law.

*In the Reign of Henry the seventh.*

1 H. 7. fol. 10.

The Pope had Excommunicated all persons whatsoever, who had bought Alum of the *Florentines*; and it was resolved by all the Judges, that the Popes Excommunication ought not to be obeyed, or to be put in execution within the Realm of *England*.

It

It was enacted, ordained and established, by the advice and assent of the Lords Spiritual and Temporal, and the Commons in the said Parliament assembled, That it be lawful to all Archbishops and Bishops, and other Ordinaries having Episcopal jurisdiction, to punish & chastise such Priests, Clerks, and Religious men being within the bounds of their jurisdiction, as shall be committed afore them by examination, and lawful proof requisite by the Law of the Church, of Advoutry, Fornication, Incest, or any other fleshly incontinency, by committing them to ward or prison, there to abide in ward until such time as shall be thought to their discretions convenient for the quality and quantity of their trespasss. And that none of the Archbishops, Bishops or Ordinaries aforesaid be thereof chargeable, of, to, or upon any action of false or wrongful Imprisonment, but that they be utterly discharged thereof in any of the cases aforesaid by vertue of this Act.

The King is a mixt person, because he hath Ecclesiastical and Temporal jurisdiction. 10 H. 7. 28.

By the Ecclesiastical Laws allowed within this Realm, a Priest cannot have two Benefices, nor a Bastard can have a Priest: But the King may by his Ecclesiastical power and jurisdiction dispence with both these, because they be *malv prohibita*, but not *mala per se*. 11 H. 7. 12.

### *How far Henry the Eighth exercised his Ecclesiastical Jurisdiction.*

IT was enacted, That if any person or persons at any time after the first of April 1530. contrary to the Act, should procure and obtain at the Court of Rome, or elsewhere, any Licence or Licences, Union, Toleration, or Dispensation to receive or take any more Benefices with cure, then was limited by the said Act; or else at any time after the said day should put in execution any such Licence, Toleration, or Dispensation, before that time obtained contrary to the said Act; That then every such person or persons so after the said day, suing for himself, or receiving or taking such Benefice by force of such Licence or Licences, Union, Toleration, or Dispensation, that is to say, the same person or persons only, and no other, should for every such default incur the danger, pain and penalty of Twenty pounds sterling, and should also lose the whole profits of every such Benefice or Benefices, as he receives or takes by force of any such Licence or Licences, Union, Toleration or Dispensation. And that if any person or persons did procure or obtain at the Court of Rome, or elsewhere, any manner of Licence or Dispensation to be nonresident at their Dignities, Prebends or Benefices, contrary to the said Act; that then every such person putting in execution any such Dispensation or Licence for himself, from the said first of April 1530. should run and incur the penalty, damage, and pain of Twenty pounds sterling, for every time so doing to be forfeited and recovered; and yet such Licence or Dispensation so procured, or to be put in execution, to be void and of none effect. 31. 21. H. 8. 13.

It was enacted, That no person from thenceforth cited or summoned, or otherwise called to appear by himself or herself, or by any Procurator, before any Ordinary, Archdeacon, Commissary, Official, or any other Judge Spiritual out of the Diocese, or peculiar Jurisdiction, where the person

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which



which shall be cited, summoned, or otherwise (as is abovesaid) called, shall be inhabiting and dwelling, at the time of awarding or going forth of the same citation or summons: Except it be for, in, or upon any of the cases, or causes hereafter written, *viz.* for any Spiritual offence or cause, committed or done, or omitted, forstowed or neglected to be done contrary to right and duty, by the Bishop, Archdeacon, Commissary, Official, or other person having Spiritual jurisdiction, or being a Spiritual Judge, or by any other person or persons within the Diocese, or other Jurisdiction whereunto he or she shall be cited, or otherwise lawfully called to appear and answer: And that every Spiritual Judge offending contrary to the purport of this Act, shall forfeit Ten shillings sterling, the one half to the King, the other half to any person that will sue for the same in any of the Kings Courts; in which action no protection shall be allowed, nor Wager of Law or Effoigne be admitted.

*Sid. 24. H. 8.  
cap. 12.*

In which, Sir E. Coke (*Cawdries case*) says, there were twenty four Bishops, twenty nine Abbots and Priors; for so many then were Lords of Parliament. It is declared, That where by divers sundry old authentique Histories and Chronicles, it was manifestly declared and expressed, that this Realm of England is an Empire, and has been so accounted in the world, governed by one Supreme Head and King, having the dignity and Royal estate of the Imperial crown of the same, unto whom a Body Politique compact of all sorts and degrees of people, divided in terms, and by names of Spirituality and Temporality, been bound and ought to bear next to God, a natural and humble obedience; He being also institute and furnished by the goodness of God, with plenary, whole and entire power, preheminance, authority, prerogative, and jurisdiction, to render and yield justice and final determination to all manner of folk, resiants or subjects within this his Realm, in all causes, matters, debates and contentions happening to occur, insurge or begin within the limits thereof, without restraint or provocation to any Forrein Princes or Potentates in the world: The body Spiritual whereof having power, when any cause of Law Divine happened to come in question, or of Spiritual Learning, that it was declared, interpreted and shewed by that part of the said body Politique called the Spiritual body then, being usually called the English Church, which always hath been reputed, and also found of that sort, that both for knowledge, integrity, and sufficiency of number, it has been always thought, and was also at that time sufficient and meet of it self, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties, as to the the rooms Spiritual did appertain. For the due administration whereof, and to keep them from corruption and sinister affection, the Kings noble Progenitors and Antecessors of the Nobles of this Realm, have sufficiently endowed the said Church both with honor and possessions. And the Laws Temporal for trial of Property of Lands and Goods, and for the conservation of the people of this Realm in unity and peace without rapine and spoil, was, and yet is administered, adjudged, and executed by sundry Judges and Ministers of the other part of the said Body Politique, called the Temporality: And both their Authorities and Jurisdictions do conjoin together in the due administration of Justice, the one to help the other.

This Statute does moreover affirm, that *Ed. 1. Ed. 3. Rich. 2. H. 4.* and

and other Kings did make divers Laws, Ordinances, Statutes, &c. for the entire and sure conservation of the prerogatives, liberties and preheminences of the said Imperial Crown, and of the Jurisdictions Spiritual and Temporal of the same, to keep it from the annoyance as well from the See of *Rome*, as from other Foreign Potentates, and does make all Causes determinable by any Spiritual jurisdiction, to be adjudged within the Kings authority.

All First-fruits, and all contributions to the See of *Rome* by any Bishop, St. 25. H. 8.  
cap. 20. were forbidden upon pain of forfeiture of all the goods and cattals for ever, and all the Temporal lands and possessions of every Archbishoprick or Bishoprick, during the time that he or they who offend contrary to the said Act, shall possess and enjoy the said Archbishoprick or Bishoprick. And that if any presented to the See of *Rome* by the King to a Bishoprick, and he be there delayed, he may be consecrated by an Archbishop in *England*; and that an Archbishop presented to the See of *Rome* to be there consecrated, and there letted, may be consecrated by two Bishops of *England*. And because the Pope hereof informed, did not redress and reform the said exactions, nor give answer to the Kings mind; therefore the said Statute did prohibit any man to be presented to the See of *Rome* for the dignity of an Archbishop or Bishop, or that any Annates or First-fruits be paid to the Bishop of *Rome*; and that upon the avoidance of any Archbishoprick or Bishoprick, the King, his heirs and successors may grant to the Prior and Covent, or Dean and Chapter of the Cathedral Churches or Monasteries, where the See of such Archbishoprick or Bishoprick shall happen to be void, a Licence under the Great seal, as of old time hath been accustomed, to proceed to Election of an Archbishop or Bishop of the See so being void, with a Letter missive containing the name of the person which they shall elect and choose; and for default of such Election, the King by his Letters Patents may nominate an Archbishop or Bishop; and that every Archbishop & Bishop to whose hands any such presentment or nomination shall be directed, shall with speed invest and consecrate the person nominated and presented by the King, his heirs and successors. And if any Archbishop or Bishop, Prior and Covent, Dean and Chapter, shall for the space of twenty days next after such Licence or Nomination come to their hands, neglect, or shall execute any Censures, Excommunications, Interdictions, &c. contrary to the execution of any thing contained in this Act, that then they incur the penalty of a *Premunire*.

An act concerning the exoneration of the Kings subjects from exactions and impositions before that time paid to the See of *Rome*, and for having Licences and Dispensations within this Realm, without suing further for the same. St. 25. H. 8.  
cap. 21.

The King shall be reputed Supreme Head of the Church of *England*, and have authority to reform and redress all Errors, Heresies, and abuses in the same. St. 26. H. 8.  
cap. 1.

Every Archbishop and Bishop disposed to have a Suffragan, may elect discreet Spiritual persons, being learned, and of good conversation, and present them under their seals to the King, making humble request to his Majesty to give to one of the two such title, name, stile and dignity of Bishop of such of the Sees as the King shall think fit; and that every such person to whom the King shall give any such stile and title of the Sees abovenamed, *viz.* the Towns of *Thetford*, *Ipswich*, *Colchester*, *Dover*, *Gilford*, *Southampton*, 26 H. 8. c. 14



Taunton, Shaftsbury, Molton, Marlborough, Bedford, Leicester, Gloucester, Shrewsbury, Bristow, Penrith, Bridgwater, Nottingham, Grantham, Hull, Huntington, Cambridge, and the Towns of Perth and Barwick, S. Germans in Cornwall, and the Isle of Wight, shall be called Bishop-Suffragan of the same See, whereunto he shall be named; and that every Archbishop and Bishop, for their own peculiar Diocese, may and shall give to every such Bishop Suffragan such Commissions as have been accustomed for Suffragans heretofore to have, or else such Commissions as by them shall be thought requisite, reasonable and convenient; And that no Suffragan shall use any ordinary jurisdiction, or Episcopal power, otherwise, nor longer time, then shall be limited by such Commission, upon pain of the penalties mentioned in the Statute of Provisions made the 16. of Rich. 2.

31. 27 H. 8.  
cap. 15.

The King shall have authority to name Thirty two persons, sixteen Spiritual, and sixteen Temporal, to examine the Laws and Constitutions heretofore made according to the Statute of 25 H. 8. 9. But no Laws or Constitutions shall be made without the Kings assent, nor contrary to the Kings Prerogative, or the Laws of the Land.

28 H. 8. c. 10.

If any person shall extoll the Authority of the Bishop of Rome, he shall incur the penalty of a *Premunire*, provided Anno 16 Ric. 2. Every Ecclesiastical and Lay-Officer shall be sworn to renounce the said Bishop and his Authority, and to resist it to his power; and to repute any Oath taken in maintenance of the said Bishop or his Authority, to be void: And the refusing of the said Oath, to be Treason.

28 H. 8. c. 16.

Makes all Bulls and Dispensations from the Bishop or See of Rome to any of the Subject of this Realm, void.

31 H. 8. c. 9.

The King may nominate such number of Bishops, Sees for Bishops, Cathedral Churches, and endow them with such possessions as he will.

31 H. 8. c. 14.  
called the  
Statute of the  
Six Articles.

1. If any person by word, writing, printing, ciphering, or otherwise, do preach, teach, dispute, or hold opinion, That in the blessed Sacrament of the Altar under form of bread and wine (after the consecration thereof) there is not really the natural body and blood of our Saviour Jesus Christ conceived of the Virgin Mary; or that after the said consecration there remains any substance of bread or wine, or any other substance, but the substance of Christ God and man: Or that in the flesh under the form of bread, is not the very blood of Christ: Or that with the blood under the form of wine, is not the very flesh of Christ, as well apart, as though they were both together: Or affirm the said Sacrament to be of other substance then is aforesaid; Or deprave the said blessed Sacrament: Then he shall be adjudged a Heretick, and suffer death by burning, and shall forfeit to the King all his lands, tenements, hereditaments, goods and chattels, as in case of High Treason. 2. Or if any person preach in any Sermon or Collation openly made, or teach in any Common School or Congregation, or obstinately affirm or defend, That the Communion of the blessed Sacrament in both kinds, is necessary for the health of mans soul, or ought to be administered in both kinds: Or that it is necessary to be received by any person (other then by Priests) being at Mass, and consecrating the same. 3. Or that any man, after the Order of Priesthood received, may marry or contract matrimony. 4. Or that any man or woman, which advisedly hath vowed or professed, or should vow or profess chastity or widowhood, may marry or contract marriage. 5. Or that Private Masses be not lawful, or

not

not laudable, or should not be used, or be not agreeable to the Laws of God. 6. Or that Auricular confession is not expedient, and necessary to be used in the Church of God; He shall be adjudged, suffer death, and forfeit lands and goods as a Felon. If any Priest, or other man or woman, which advisedly hath vowed chastity or widowhood, do actually marry or contract matrimony with another; Or any man which is, or hath been a Priest, do carnally use any woman, to whom he is, or hath been married, or with whom he hath contracted matrimony, or openly be conversant or familiar with any such woman; both man and woman shall be adjudged Felons. Commissions shall be awarded to the Bishop of the Diocese, his Chancellor, Commissary, and others, to enquire of the Heresies, Felonies, and offences aforesaid: And also Justices of Peace in their Sessions, and every Steward, Under-Steward, and Deputy of Steward, in their Leets or Law-day, by the oath of twelve men, have authority to enquire of the Heresies, Felonies, and offences aforesaid.

See the 7. Chap. of *B. Bramhalls Just Vindication of the Church of England*, where he endeavours to shew that not only the Emperor, the King of France, nay, and the King of Spain, have in effect done the same things with Henry the Eighth, upon occasion, or at least plead for it, although for their interests they have not continued the exercise of their Jurisdiction, as the Kings of England have done.

*A short view or reflexion upon Henry the Eighth, and his Reformation.*

How zealous a Defender of the Pope, and See of Rome, Henry the Eighth was in the beginning of his Reign, is evident by his book written against *Martin Luther*: For, not being born Henry the seventh's eldest son, his Father being a wonderful frugal Prince, and observing good natural parts in him, bred him up in literature, and destinated him to the Archbishoprick of *Canterbury*, as being the cheapest, and highest preferment he could give him; But his elder brother being dead, and after him his father; The King esteeming it a great honor to imploy himself in so famous a controverſie as was then maintained by the Wits of Christendom, in defence and opposition of the Church of Rome, wrote a book of the *Seven Sacraments*, defending also the Papacy, and oppugned the Doctrine of *Luther*. This thing was so grateful to the Pope, that *Leo 10.* honored him with the Title of *Defender of the Faith*. But after he had been married to his brothers wife above twenty years, and inflamed with lustful affection to *Anne Bullen* a Paragon and Minion of the Court, he became (he said) troubled in conscience for having married his brothers wife; and therefore desired that the Pope would examine the case, and satisfy his scruple of conscience. (It is a very remarkable thing, that this ungodly Dispensation of *Julius 2.* for *H. 8.* his marrying with his brothers wife, should be the cause of the King and Kingdoms defection from the Papacy under *Clement 7.*) The Pope, to satisfy the King, gave the Cardinals *Wolsey* and *Campeius* a power Legatine to hear and determine the validity, or invalidity of the marriage; but the Queen refusing to submit to their determination, appealed from them to the Pope. The Pope had now a Wolf by the ears, whom he could neither keep, nor well let go: For, in pronouncing the marriage void, he feared to incense *Charles the Fifth* (being Nephew to Queen *Katherine*, and the most potent Prince in Christendom) and in confirming it, he feared to lose Henry the then

*K. H. 8. a zealous defender of the Pope and Papacy.*

*From what cause the King became estranged from the Pope.*

*most*



most beloved Son of the Church, and great Defender of the Papacy, not only in writing, but also in joining with and assisting the French King *Francis the First*, for freeing him from captivity, being a prisoner under *Charles*. The Pope therefore desires the advantage of time, and proceeds slowly towards a determination: The King as impatient in his desires, expects a sentence from the Pope, which not being to be had, he procures Instruments from the Universities of *Cambridge*, *Oxford*, and *Paris*, together with the Opinion of Learned men, That the marriage with his Brothers wife, was contrary to the Law of God, and void. The King not expecting the Popes sentence, anno 1533. marries his beloved *Anne*, (but such love is usually too hot to hold, for about two years after he cut off her head :) yet the King did not wholly renounce the Papacy, but still expecting the Popes sentence.

The slow proceedings of the Pope.

The Pope, for the reasons aforesaid, not desiring to end the business, but to expect advantage from time, reduces the matter into several points or heads, which he would have particularly disputed; and at the time of the Kings marriage with *Anne*, was not got further then the article of *Attentates*, in which the Pope gave sentence against the King, that it was not lawful for him to put away his wife by his own authority, without the Ecclesiastical Judge. For which cause the King in the beginning of 1534. denied the Pope his obedience, commanding his Subjects not to pay any money to *Rome*, nor to pay the ordinary Peter-pence. This infinitely troubled the Court of *Rome*, and they daily consulted of a remedy: Some thought to proceed against the King with censures, and to interdict all Christian nations all commerce with *England*; But the moderate counsel pleased best, to temporise with him, and to mediate a composition by the French King. *K. Francis* accepted the charge, and sent the Bishop of *Paris* to *Rome*, to negotiate a Pacification with the Pope; where they still proceeded in the cause gently, and with resolution not to come to censures, if the Emperor did not proceed first, or at the same time with his forces. They had divided the cause into twenty three articles, and then they handled whether Prince *Arthur* had had carnal conjunction with Queen *Katherine*; in this they spent time till *Midlent* was past, when the 19. of *March* news came, that a Libel was published in *England* against the Pope and the whole Court of *Rome*, and besides, a Comedy had been made in presence of the King and Court, to the great disgrace and shame of the Pope, and every Cardinal in particular. For which cause all being inflamed with choler, ran headlong to give sentence, which was pronounced in the Consistory the 24. of the same month, That the marriage between *Henry* and *Katherine* was good; that he was bound to take her to wife, and that in case he did not, he should be excommunicated.

His rash censure repented of,

and

Utterly loses the obedience of England.

But the Pope was soon displeased with this precipitation: For, six days after, the French Kings letters came, That the King was content to accept the sentence concerning *Attentates*, and to render obedience, upon condition that the Cardinals whom he mistrusted, should not meddle in the business, and that persons not suspected should be sent to *Cambray* to take information; and the King had sent his Proctors before, to assist in the Cause at *Rome*. Wherefore the Pope went about to devise some pretence to suspend the precipitate sentence, and again to set the cause on its feet.

But the King, so soon as he had seen it, said, It was no matter; for the Pope should be Bishop of *Ames*, and himself sole Lord of his Kingdom: And

And that he would do according to the antient manner of the Eastern church, not leaving to be a good Christian, nor suffering the *Lutheran* Heresie, or any other to be brought into his Kingdom.

From that time forward, *Henry* the Eighth, of a zealous Assertor of the Papacy both by pen and purse, became the first, and greatest Opposer of it, of all the Western Christian Princes; (for the Eastern Christian Princes, except sometimes the Emperors of *Greece*, and the Kings of Holy Land, did seldom or never submit to the Papacy in her Spirituals) yet did he afterwards seek to be reconciled to the Pope, even by means of his Nephew *Charls* the Fifth. Nor were the Popes much behind hand with him: For besides *Clement's* petty Excommunication, *Paul* the Third, Anno 1538. thundred out such a terrible Excommunication against him, as the like was never heard of; which deprived him of his kingdom, and his adherents of whatsoever they possessed, commanding his Subjects to deny him obedience, and Strangers to have no commerce in the kingdom; and all to take arms against, and persecute both him and his followers, granting them their states and goods for their prey, and their persons for slaves. But the Popes anger ended in words; whereas the Kings deeds took place against the Pope.

No anger lost  
between the  
King & Pope.

But what there was in all the Kings reign, which might be called Reformation, I do not understand: For, whatsoever the King took from the Pope (except Peter-pence) he ascribed to himself. If the Pope would be Head of the Catholique Church, the King would be Head of the Church of *England*: If the Pope challenged *Annates* and First-fruits of the Bishops and Clergy, the King would do no less: If the Pope did give Abbots and Priors power, being Ecclesiastical persons, to make divers Impropriations to their benefit, the King will take a power to take them all away, and convert them into Lay-fees, and incorporate them so into particular mens estates, that they shall never return to the Church more. Nor had he any love or desire of Reformation of the Church, but only to the Church-lands; for, all the Rites, Ceremonies, and Religion of the Church of *Rome* was continued, and that with such bloody cruelty, that a Stranger going over *Smithfield* one day, and seeing two men there executed, one for denying the Kings Headship of the Church, and another for subscribing to the Six Articles, cried out, *Bone Deus, quomodo hic agunt viri! hic suspenduntur Papista, ibi comburuntur Antipapista*. And so zealous did he continue herein, that Pope *Paul* the Third, after he had fulminated so dreadfully against him, proposed him for an Example to be imitated by *Charls* the Fifth.

What was  
the Kings Re-  
formation,

Hist. Conc.  
Trid. fol. 901

Although such was the temper of this Prince, that he never spared man in his rage, woman in his lust, nor any thing which might be called sacred in his avarice; yet so absolute was he, that his Divorce was attested by both the Universities at home, besides that at *Paris* abroad; his freeing himself and the Nation from the jurisdiction of the Pope, was not only assented to by a Synod and Convocation of all the Clergy of *England*, but the English and Irish Nobility did make their submissions by an Indenture to Sir *Anthony Sellinger*, then, chief Governor of *Ireland*, wherein they did acknowledge King *Henry* to be their lawful Sovereign, and confessed the Kings Supremacy in all causes, and utterly renounced the Pope. But Divorce, banishing the Papal authority, Dissolution of Abbies, and all, were easily passed and assented to in Parliament.

The exolution  
of the Papal  
jurisdiction,  
was an act of  
the King,  
Kingdom, and  
Church of  
*England*.

Bram. Vind. of  
the Church of  
*England*, p. 43.

But



The Pope was  
more unjust  
in his censures  
then the King  
was in exclu-  
ding the Papal  
jurisdiction.

1 Pet. 2. 13.

But whatsoever the King were otherwise, yet sure the Popes passion against him carried them to greater extravagancies and exorbitancies, then were on his part against them. For, suppose that the Pope had *de facto* the Investitures of Bishops, Peter-pence, Annates and First-fruits paid them, and did exercise a jurisdiction over all the Church and Clergy; yet no question, all these things were by the grants and permission of precedent Kings; and if Kings may grant and permit these things, then what hinders but that they may recall them? for, *Cujus est velle, ejus est nolle*. Besides, we have already shewed, that although there were not that bitter personal spite between the Kings of *England* and the Popes formerly, as was between *Henry 8.* and *Clement 7.* and *Paul 3.* yet did many of them ascribe as little to the Pope, as *Henry* did. But for a Pope to deprive a Christian Prince of his kingdom, over whom he had no manner of right; his Adherents, of whatsoever they possessed; to command his Subjects to deny their obedience to their Sovereign, and Strangers not to have any commerce in the kingdom; and all to take arms against him and his followers, granting them their estates and goods for a prey, and their persons for slaves, is so unlike to the example and precept of *S. Peter* (whom they pretend to succeed) who not only suffered death under Temporal power, but, inspired by God, does command so expressly obedience to Kings, not as subordinate to himself, but as supreme: And of our Saviour himself, who both suffered himself under Temporal power, and paid tribute to *Cesar*, and took not away, but fulfilled the Moral Law, which commands obedience to Princes and Higher powers, and whose kingdom was not of this world; that sure no Turk or Infidel was so much an enemy to Christians, or indeed rather to mankind, as to have desired it.

### *The state of the Church, and of the Ecclesiastical Laws made by Edward the sixth.*

*Camb. pref.  
Elix. Reg. &  
Life of Ed. 6.*

*An. 1. Ed. 6. c. 6.*

**T**He time of this Kings reign, being a Child, (and therefore woful) and of his Father, were perillous days: The Father in his Laws scarce ever took advice but from his passion, lust, or avarice; the Son (although a Prince of infinite hope and goodness, yet) wanting the authority and reputation requisite in a Sovereign, was either not able to restrain, or else perswaded it was beneficial, to give reins to a company of Sacrilegious Harpies, and Courtiers, to make a total prey not only upon all Colledges, Free-Chappels, Chuntries, and all their Lands, except them of the Universities and some few other, which by the Statute of 1 *Ed. 6. cap. 14.* were given to the King upon specious pretences; but the Lands of the Bishops generally became a prey unto them. So much worse is it for every thing to be lawful, then that any thing should be Law.

It was enacted, That if any man spake irreverently or contemptuously of the Sacrament of the Altar, he should be imprisoned and fined at the Kings will and pleasure; and that Justices of Peace might enquire of offenders: Yet should not the person offending be arraigned or tryed, unless the Bishop of the Diocese, or his Chancellor, or Deputy learned were required to be at the Quarter-Sessions; to which purpose a new Writ was made. *Rex &c. Episc. L. salutem. Pracipimus tibi, quod tu, Cancellarius tuus, vel alius*  
Depn.

*deputatus tuus sufficienter eruditus, sitis cum Justiciariis nostris ad pacem in com. nostro B. conservand. assignat. apud D. tali die, ad sessionem nostram, tunc & ibidem tenend. ad dand. consilium & advisament. eisdem Justiciariis nostris ad pacem, super arraignment & deliberationem offendet: contra Formam statuti concernend. sacrosanctum Sacramentum Altaris.* And by this Statute it was Enacted, that the Sacrament should be delivered to the people under both Kindes, viz. of Bread and Wine.

From thenceforth no *Conge desier* shall be granted, nor any Election shall be made of any Archbishop or Bishop, by the Dean and Chapter; but when any Archbishoprick or Bishoprick shall be voided, the King by his Letters Patents may confer the same to any person whom he shall think meet, &c. All summons, citations, and other proces Ecclesiastical, shall be made in the name, and with the stile of the King, as in the Writs of the common Law, and the test thereof shall be in the name of the Archbishop, or Bishop, &c. All persons that have the exercise of Ecclesiastical Jurisdiction, shall have in their Seals of Office, the Kings Arms, with certain characters under them for the knowledge of their dioceses; but the Archbishop of Canterbury shall use his own Seal, and his own name in all faculties and dispensations.

An. 1 Ed. 6.  
Cap. 2.

A man speaking against the Kings Headship of the Church, shall, being thereof attaint or convicted, forfeit all his Goods and Chattels to the King, and suffer imprisonment during the Kings will and pleasure for the first offence: and for the second offence, forfeit to the King the whole issues and profits of all his Lands, and all his Goods and Chattels, and suffer perpetual imprisonment: and for the third offence, shall be adjudged a Traytor, and suffer death, and forfeit all his Goods and Chattels, Lands and Tenements, as in cases of High Treason. And it shall be deemed Treason for any, by Printing, Writing, or Deed, to affirm the King not to be Head of the Church.

An. 1 Ed. 6.  
Cap. 12.

An Act for uniformity of Service, and administration of Sacraments; being before divers, and different, viz. of *Sarum*, of *York*, of *Banger*, and of *Lincoln*; and divers and sundry forms and fashions were used in Cathedrals, and Parish-Churches of *England* and *Wales*, as well concerning Mattens, or Morning Prayer, and the Evening Song, as also concerning the holy Communion, commonly called the Mass, with divers and sundry rites and ceremonies concerning the same, and in the administration of the Sacraments of the Church: The Statute does inflict upon every Parson, Vicar, or other whatsoever Minister that ought or should say or sing the said Common Prayer, mentioned in the said Book, Entituled, the Book of Common Prayer, and Administration of the Sacraments, and other rites and ceremonies of the Church, after the use of the Church of *England*, and shall refuse it, or use any other form, or shall Preach, Declare, or speak any thing in derogation of the said Book, or any thing contained therein, and be thereof lawfully convicted by a Jury of twelve men, or by confession, shall forfeit to the King for the first offence, the profit of all his Spiritual benefices and promotions arising in a whole year, and suffer imprisonment for six moneths, without bail or mainprize. And for the second offence, shall suffer a years imprisonment, and be deprived of all his spiritual promotions; and for the third offence, shall suffer imprisonment during life. It was Enacted that the Justices of *Oyer* and *Terminer*, and Justices of Assize, should have power and authority in the open

An. 2 & 3 Ed. 6.  
Cap. 1.



and general Sessions, to hear and determin the offences committed against this Act, yet so that every Archbishop, and Bishop had liberty to joyn and associate himself to the said Justices of *Oyer and Terminer*, or to the Justices of *Assize*.

An. 3. & 4.  
Ed. 6. Cap. 10.

All books called *Antiphoners*, *Missals*, *Grails*, *Portuasses*, *Primers* in *Latine* or in *Englisb*, and other books used for service in the Church (saving such as are set forth by the Kings Authority) shall be clearly abolished. All Images, graven, painted, or carved, taken out of any Church or Chappel, and the aforesaid books shall be defaced, or openly burnt.

Anno 3 & 4.  
Ed. 6. Cap. 12.

Such form and manner of making and consecrating of Archbishops, and Bishops, Priests and Deacons, and other Ministers of the Church, as by six Prelates, and six other men of this Realm, learned in the Law of God, by the King to be appointed and assigned, or by most of the number of them shall be devised for that purpose, and set forth under the Great Seal before the first of *April* next coming, shall be lawfully exercised and used, and none other.

An. 5. & 6.  
Ed. 6. Cap. 1.

An Act for uniformity of Prayer, and administration of the Sacraments in the English Tongue; and that every person upon every Sunday and Holiday (having no lawful cause to be absent) do resort to his Parish-Church; and they which refuse, are to be punished by the censure of the Church: and that all persons who shall be at any other common prayer or Sacraments, shall for the first offence, suffer Imprisonment for six moneths, without bail or mainprife, for the second Imprisonment during a whole year, and for the third Imprisonment during life.

An. 5. & 6. Ed.  
6. Cap. 2.

All the Sundays of the year, the Feast of our Lord Jesus, his Circumcision, of the Epiphany, of the Purification of the blessed Virgin, of St. *Matthew* the Apostle, of the Annunciation of the blessed Virgin, of St. *Mark* the Evangelist, of St. *Philip* and *Jacob* the Apostles, of the Ascension of our Lord Jesus Christ, of the Nativity of St. *John* the Baptist, of St. *Peter* the Apostle, of St. *James* the Apostle, of St. *Barthelomew* the Apostle, of St. *Matthew* the Apostle, of St. *Michael* the Archangel, of St. *Luke* the Evangelist, of St. *Simon* and *Jude* the Apostles, of All Saints, of St. *Andrew* the Apostle, of St. *Thomas* the Apostle, of the Nativity of our Lord, of St. *Stephen* the Martyr, of St. *John* the Evangelist, of the holy Innocents, Munday and Tuesday in *Easter-week*, Munday and Tuesday in *Whitsun-week*, are to be observed and kept for Holy days, and none other.

And that every even, or day next going before any of the aforesaid days of the Feasts, of the Nativity of our Lord, of *Easter*, of the Ascension of our Lord, *Pentecost*, of the Purification, of the Annunciation of the blessed Virgin, of all Saints, and of all the Feasts of the Apostles (other then the Feasts of St. *John* the Evangelist, and *Philip* and *Jacob*) shall be kept for fasting days, and none other. Archbishops, Bishops in their Dioces, and all other, having Ecclesiastical or Spiritual Jurisdiction, may enquire of every person offending in the premises, and punish every offender by censures of the Church, and enjoin him such penance as by the spiritual Judge shall be thought meer.

This Statute does not abrogate abstinence from flesh in Lent, and Fridays and Saturdays, or any day appointed to be kept by vertue of an Act made the second and third *Ed. 6. Cap. 19*.

When any Holy day happens on the Munday, the fast of that day shall be kept upon the Saturday immediately before, and not upon the Sunday.

*A view of the Reformation of Ed. 6. and of the lawfulness of it.*

That the Book of common Prayer, Administration of the Sacraments, and other rites and ceremonies of the Church, after the use of the Church of England, was framed and composed by the Archbishop of Canterbury, and certain of the most learned and discreet Bishops of the Land, assembled to that purpose by the King, is clearly expressed in the Preface to the Act of the 2. & 3. Ed. 6. Cap. 1.

The Reformation made by Ed. 6. was not merely a civil sanction.

The right that Christian Kings have to call and assemble Synods, Councils and Convocations, for the redress and reformation of errors and corruptions in the Church, is properly the subject of another Treatise, but that the Kings and supreme Powers before Christianity under the old Law, from Moses to Maccabees, did always use it; and that the first great Nicene Council, the second general Council at Constantinople, the third at Ephesus, the fourth at Chalcedon, the fifth at Constantinople, the sixth at Constantinople, the seventh at Ephesus, were all called by Christian Emperors, is manifested by the Bishop of Winchester, Andrews, in the Sermon of the Right and Power of calling Assemblies; nor were the general Councils convoked by Emperors; but the Emperors and Kings did convoke, and assemble Provincial and National Assemblies and Synods. He shews that the Bishop of Syracuse in Sicily, and Resistant Bishop of London in Britain, were summoned to a Synod in France, by the Emperor Constantine Writ onely; this was in the beginning of his Reign; in the latter end of it, in the thirtieth year of his Reign, and the year before his death, he called the Council at Tyre, and from thence removed it to Jerusalem, and from thence called them to appear before himself at Constantinople. After him Constant called one at Sardis, Valentinian at Laropfacus, Theodosius at Aquileia, Gratian at Thessalonica. Nay, when the Emperors were professed Arrians, even then did the Bishops acknowledge their power to call Councils; came to them being called, sued to them that they might be called; came to them as Hosius to that of Arimine, Liberius to that of Stirium, and that of Seleucia, sued for them as Liberius to Constantius; as Leo to Theodosius, for the second Ephesine Council; Innocentius to Arcadius; and sometime they sped as Leo, and sometime not as Liberius, and Innocentius; and yet when they sped not, they held themselves quiet, and never presumed to draw themselves together of their own heads.

It is no new thing for Kings to assemble the Bishops and Church to redress and reform errors.

After the Empire fell in pieces, and the Western Empire fell into the hands of Kings, in Italy, Theodoric called one at Rome, Alaric at Agatha: In France, Clowis (the first Christian King there) called one at Orleans; Childeric at Auvern, Theodebert called another at Orleans, and Cherebert at Tours: And after them, Gunthramm, Clowis, Carloman and Pepin, at Masscon first and second, at Chalons: That which is called Francia, and that which is in Vernis: Twenty of them at least in France.

In Spain by ten several Kings, in two Councils at Brattara, and in ten at Tolledo, by the space of three hundred years together. And how? under what terms? Peruse the Council themselves, their very acts spake, *Ex precepto, Imperio, Jussa, Sanctione, Nutu, Decreto, Ex evocatione, Dispositione Regis*: One saith, *Potestas permissa est nobis*, another, *facultas data est nobis*: a third, *Injunctu est nobis a rege*: and this for about eight hundred years after Christ.



Then arose another Empire here in the West under *Charls* the Great; and he called six several Councils, at *Frankfort*, *Arles*, *Tours*, *Chalons*, *Mentz*, and *Rhemes*. And what says he in them? In that at *Rhemes*: *In conventu more priscorum Imperatorum congregato à piissimo Domino nostro Carolo*; That he called that Convention by no other right, then as the manner of the antient Emperors had been to do.

After him, *Ludovicus Pius*, *Lotharius*, *Ludovicus Balbus*, *Carolus Calvus*, *Carolus Crassus*, and *Arnulphus*, at the several Councils of *Aken*, *Mentz*, *Melden*, *Wormes*, *Colen*, and *Tribur*; and so held it nine hundred years after Christ; for about that year (a year or two over or under) was holden the Council at *Tribur* in *Germany*, by the Emperors decree, and himself President in it. Nor are the Kings of *England* less absolute, then either Emperors, Kings of *Spain* or *France*. And see *B. Bramhall's Just Vindication of the Church of England*, cap. 7. how the Emperors, Kings of *France*, *Spain* and *Portugal*, have by their own authority convened National and Provincial Councils, which have not only determined without the Papal authority, but very often in contradiction to it. Nor are either the English or British Churches, or ever were, less free then the Gallicane, the liberties whereof in the Chapter aforesaid are set down, viz.

The privileges of the Gallican Church.

1. The Pope cannot command or ordain any thing directly or indirectly concerning any Temporal affairs, within the Dominions of the King of *France*.

2. The Spiritual authority and power of the Pope, is not absolute in *France*, but limited and restrained to the canons and rules of the antient Councils of the Church, and received in that Kingdom.

3. No command whatsoever of the Pope can free the French Clergy from their obligation to obey the commands of their Sovereign.

4. The most Christian King hath had power at all times, according to the occurrence and exigence of affairs, to assemble or cause to be assembled Synods Provincial or National, and therein to treat not only of such things as concern the conservation of the Civil estate, but also of such things as concern Ecclesiastical order and discipline in his own dominions; and therein to make Rules, Chapters, Laws, Ordinances, and Pragmatique Sanctions in his own name, and by his own authority. Many of which have been received among the Decrees of the Catholique Church, and some of them approved by General Councils.

5. The Pope cannot send a Legate *à latere* into *France*, with power to reform, judge, collate, dispence, or do such things accustomed to be specified in the authoritative Bull of his Legation, except it be upon the desire, or with the approbation of the most Christian King. Neither can the said Legate execute his charge, until he hath promised to the King in writing, under his oath upon his holy Orders, not to make use of his Legantine power in the Kings dominions, longer then it shall please the King; and that so soon as he shall be admonished of the Kings pleasure to forbid it, he shall give it over: And that whilst he doth use it, it shall be exercised conformable to the Kings will, without attempting any thing to the prejudice of the Decrees of General Councils, or the Liberties and Priviledges of the Gallicane Church, and the Universities of *France*.

6. The Commissions and Bulls of the Popes Legate are to be seen, examined and approved by the Court of Parliament, and to be registred and

and published with such cautions and modifications, as that Court shall judge expedient for the good of the Kingdom, and to be executed according to the said cautions, and not otherwise.

7. The Prelates of the French Church (although commanded by the Pope) for what cause soever it be, may not depart out of the Kingdom, without the Kings commandment or licence.

8. The Pope cannot by himself, or his delegates, judge any thing which concerns the state, preheminance or privileges of the Crown of *France*, nor any thing pertaining to it; nor can there be any question or process about the state or pretensions of the King, but in his Courts.

9. Papal Bulls, Citations, Excommunications, &c. are not to be executed in *France*, without the Kings command or permission; and after permission, only by the authority of the King, and not by authority of the Pope, to shun mixture and confusion of Jurisdictions.

10. Neither the King nor his Realm, nor his Officers, can be excommunicated or interdicted by the Pope, nor his Subjects absolved from their Oath of Allegiance.

11. The Pope cannot impose Penfions in *France* upon any Benefices having cure of souls, nor upon any others, but according to the canons, according to the expresse condition of resignation, or *ad redimendum vacationem*.

12. All Bulls and Missives, which come from *Rome* to *France*, are to be seen and visited, to try if there be nothing in them prejudicial in any manner to the estate and liberties of the Church of *France*, or to the Royal authority.

13. It is lawful to appeal from the Pope to a future Council.

14. Ecclesiastical persons may be convented, judged and sentenced before a Secular Judge, for the first grievous or enormous crime, or for lesser offences after a Relapse, which renders them incorrigible in the eye of the Law.

15. All places of *France* are obliged to swear fealty to the King, and to receive from him investitures for their fees and manors.

16. The Courts of Parliament, in case of Appeals as from abuse, have right and power to declare null, void, and to revoke the Popes Bull and Excommunications, and to forbid the execution of them, when they are found contrary to Sacred Decrees, the liberty of the French Church, or the Prerogative Royal.

17. General Councils are above the Pope, and may depose him and put another in his place, and take cognisance of Appeals from the Pope.

18. All Bishops have their power immediately from Christ, not from the Pope, and are equally successors of *S. Peter* and of the other Apostles, and Vicars of Christ.

19. Provisions, Reservations, Expective graces, &c. have no place in *France*.

20. The Pope cannot exempt any Church, Monastery, or Ecclesiastical body from the jurisdiction of the Ordinary, nor erect Bishopricks into Archbishopricks, nor unite them, nor divide them without the Kings licence.

21. All those are not Hereticks, excommunicated, or damned, who differ in some things from the doctrine of the Pope, who appeal from his decrees, and hinder the execution of the ordinances of him or his Legates.

Although



The reformation of King Ed. was not Schismatical.

The rites and ceremonies of Edwards reformation, were more uniform then before.

See preamble to the Statute of 2 & 3. Ed. 6. Cap. 1. That the Scriptures, Lords Prayer, and Creed, should be read in the English tongue, is no new thing in England.

Edwards reformation was not Heretical.

King Edwards Reformation was warrantable, material, and formally.

1 Tim. cap 2.

obje<sup>8</sup>.

Although the Seſſion of the Church, King, and Kingdom of England, from the Papacy, were an Act of Schiſm; yet being done in the Reign of H. 8. one of the greateſt favorers of the Papacy that ever was King of England, and to his death, as great an aſſertor of the Rites, Ceremonies, and Religion of it, and in ſuch a ſtate independent from the Church of Rome, was the Church and Kingdom at the time of Edwards Reformation; whatſoever therefore his Reformation was, yet could it not be Schiſmatical.

Whatever the Romanists pretend to unity and peace in their Church, yet it is moſt manifeſt, that in the Realm of England, and Dominion of Wales, in ſeveral places were uſed divers forms of Prayer, commonly called the Service of the Church, viz. that of *Salum*, of *Tork*, of *Bangor* and *Lincoln*; but alſo of late, divers and ſundry forms and faſhions were uſed in the Cathedral, and Pariſhes Church of England and Wales, as well concerning the matters, or morning prayer, and evening ſong, as alſo concerning the holy Communion, commonly called the Maſs, with divers and ſundry rites and ceremonies concerning the ſame; and in the adminiſtration of other Sacraments of the Church, whereas the ſervice enjoyned in the Reign of Ed. 6. was uniform in all places of England and Wales, as well in Pariſh Churches as Cathedrals.

In the Reign of King Ethelbald, in the year of our Saviors incarnation 748, in a convocation held in the Province of Canterbury, Caſhbert, the Archbiſhop of his Clergy did Enact, that the ſacred Scriptures ſhould be read in their monaſteries, the Lords Prayer and Creed, taught in the English tongue. Speed in the Reign of Ethelbald, para. 4. page 343. and how much it was againſt the Word of God, and the cuſtom of the ancient Church, to uſe a tongue unknown to the people, in common prayer, and adminiſtration of Sacraments, ſee the conference at Weſtmiſter, an. primo Eliz. which were never yet answered, that I know of.

If any thing Heretical had been contained in the common Prayer, adminiſtration of Sacraments, &c. made in the Reign of Ed. 6. it would have been ſufficiently ſhot at, having ſo many adverſaries at home and abroad; but no ſuch crime was ever (that I ever heard of) imputed to it; if there be, let the adverſaries of it yet ſhew it, & *affirmanti incumbit probatio*.

If then not onely the Kings and ſupreme powers always under the old Covenant, had this right of invoking the High Prielt, and other Prielts; and if God always puniſhed the Kings of Judah and Iſrael for ſuffering the people to commit Idolatry; and if God himſelf ſo often commends the zeal and reformation of Jeſhoſaphat, Hezekiah, Aſa, Joſiah, &c. and if ever ſince Chriſtianity, the Biſhops by that Divine Canon to Timothy, have always had in their particular Churches, right of compoſing publick Liturgies, and in national Synods, a right of compoſing publick and national Liturgies: And the Liturgy of Edward being compoſed, and received by the Biſhops of the Church of England, to that end convened and aſſembly by the King, this Liturgy being neither ſchiſmatical, nor containing any thing heretical; is both for matter and form, warrantable.

If the Sacrilege and extention of the civil Jurisdiction in giving the civil Magiſtrate licence to take cognizance of the publique Liturgy, and adminiſtration of the Sacraments be objected:

The aſſwer is eaſie. Let the Courtiers and Parliament aſſwer for it, the Church was patient, not agent in them.

The Church of Rome having robbed the poor laity of one half of the inſtitution

tution of the Sacrament of the Lords Supper, and kept the people in such stupid ignorance, that in the publick worship and service of God, they should neither use their reason nor understanding, by imposing it upon them in an unknown tongue, as if in the publick worship and service of God, he were not to be served by intellectual and rational creatures, and had filled the Mass with more prayers to the Virgin *Mary* and Saints: (which could no ways relieve them, and so at best superfluous and vain) there was great reason in the King and Church, to make a reformation of the Religion and publick Worship and Service of God.

The King and Church had great reason to make Reformation in Religion.

*Of Queen Mariæ Ecclesiastical Laws.*

Although King *Ed.* were a Prince of transcendent Vertue and Learning far above his years, yet doubtless his youth was not onely much abused in his Reign, where a man might have seen all the woes pronounced by God, upon that Nation, where the King is a childe, or where a company of men in Parliament arrogate to themselves the Politick capacity of a King, abstracted from his person; but also at his very death (caused, not without suspicion of poyson,) was he deluded upon specious pretences by his whole Council, but principally by the Duke of *Northumberland* (to make way for the Lady *Jane Gray*, in the time of his sickness married to his fourth son *Gilford Dudley*) to declare the said Lady *Jane* the rightful heir and successor to the English Monarchy, to the manifest wrong and injury, not onely of Queen *Mary*, and *Elizabeth*, afterward Queens of *England*, but also of *Mary Queen of Scots*, heir to *Margaret* the eldest daughter of *Henry* the seventh; whereas the Lady *Janes* Title was descended from *Mary* the younger daughter of *H. 7.* yet it so pleased God, that this unjust Will, should onely bring destruction both to the Lady *Jane* and her husband: whereas the Ladies, *Mary* and *Elizabeth*, and the Posterity of *Mary Queen of Scots*, did all succeed and enjoy the possession of the English Diadem, of which they were debarred by this Will of King *Edward*. That the Title of Head of the Church was continued by Queen *Mary*, appears by the Parliament begun and holden at *Westminster* the fifth of *October*, in the first year of her Reign, in the first and second session of it, where she is stiled, our Gracious Sovereign Lady, *Mary* by the Grace of God, Queen of *England*, *France* and *Ireland*, Defender of the Faith, and in Earth Supreme Head of the Church of *England* and *Ireland*; but in the second Parliament of her Reign, being holden at *Westminster*, the second of *April*, the first year of her Reign, the Title of Supreme Head of the Church of *England* and *Ireland*, is not mentioned.

Declares Queen *Mary* to be born in lawful Matrimony, and all sentences of divorce to the contrary repealed; particularly the sentence of *Thomas Cranmer* Archbishop of *Canterbury*, touching the Kings marriage with Queen *Katherine*, and the two Acts of Parliament of the 25 *H. 8.* 22. & 28 *H. 8.* 7. confirming the same.

Stat. in Pri.  
Cap. 1. sess. 2.  
*Maria.*

A Repeal of the Statute of 1 *Ed. 6.* 2. made against such as speak unreverently of the body and blood of Christ, and of the Statute of 1 *Ed. 6.* 3. touching Election of Bishops, and the 2 *Ed. 6.* 1. concerning the uniformity of service, and administration of the Sacraments: and of 2 *Ed. 6.* 21. made to take away all positive Laws, ordained against the marriage of Priests. and of the 3 *Ed. 6.* 10. made for the abolishing of divers books and Images, and of the 3 *Ed. 6.* 12. made for the ordering of Ecclesiastical Ministers: and of the 5 *Ed. 6.* 1. made for the uniformity of common Prayer, and Administration

St. An. Pri.  
Ma. sess. 2.  
Cap. 2.



Administration of Sacraments: and of the 5 *Ed.* 6. 3. made for the keeping of Holy days, and Fasting days: and of the 5 *Ed.* 6. 12. touching the Marriage of Priests, and legitimization of their children. All such divine service, and administration of Sacraments, as were most commonly used in *England* in the last year of *H.* 8. shall be used through the Realm, after the 20. day of *December Anno Dom.* 1553. and so other kinde of service, nor administration of Sacraments.

*St. An. I Maria*  
*Seß. 2. Cap. 3.*

It is Enacted, That if any person or persons, of their own power and authority, after the 20. of *December*, shall willingly, and of purpose, by open or overt word, fact, &c. maliciously or contemptuously neglect, vex, or disturb, &c. any Preacher or Preachers licensed, allowed or authorized to Preach by the *Queens Highness*, or by any Archbishop, or Bishop of this Realm, or by any other lawful Ordinary, or by either of the Universities of *Oxford* or *Cambridge*, or otherwise lawfully authorized by reason of his Cure or Benefice, &c. in any open Sermon, Preaching or Collation, in any Church, Chappel, or Churchyard, &c.

Or if any person shall wilfully disturb, &c. any Parson, Vicar, Parish-Priest, Curat, or other lawful Priest, saying or celebrating the Mass, or other divine service, sacraments, or sacramentals, as was commonly frequented and used in the last year of *H.* 8. or afterward should be allowed and set forth, or authorized by the *Queen*.

Or if any person shall contemptuously, unlawfully, or maliciously deface, spoil, abuse, or unreverently handle or order the most blessed, comfortable and holy sacrament of the body and blood of our Lord and Saviour *Jesus Christ*, commonly called the Sacrament of the Altar, being in any Church, Chappel, or other decent place, or the Piece, or Canapy wherein the same Sacrament is, or shall be, or pull down, deface, spoil, or otherwise break any Altar or Altars, or any Crucifix, or Cross in any Church, Chappel, or Churchyard. That then every such offender, his ayders and abettors, shall be apprehended, &c. by the Constable or Churchwarden of the place wherein the said offences shall be committed.

Which persons so apprehended, &c. with convenient speed shall be brought, and carried to any Justice of Peace within the said Shire, &c. where the said offence shall be committed, and the said Justice of Peace upon due accusation, shall forthwith commit the said person or persons, to safe custody, as by the discretion of the said Justice shall be thought meet, and within six days next after such accusation, the said Justice, with other Justices of Peace in the said Shire, City, &c. shall diligently examine the acts and offences aforesaid.

And if two of the said Justices of Peace shall upon examination, finde the person or persons so accused, guilty of any of the said offences, by two sufficient witnesses, or by confession, the said Justices of Peace shall commit the person or persons so accused, to the Gaol of the County, City, Burrough, &c. where the said offences were committed, without bail or mainprize, by the space of three moneths, and further to the next quarter sessions to be holden in the said shire, city, burrough, &c. next after the end of the said three month, which quarter sessions the party offending, upon his repentance and reconciliation, shall be discharged out of prison, upon sufficient security for his good behaviour for one whole year; but if he or they will not repent and be reconciled, then to be committed again to the said Gaol, there to remain until he or they shall repent and be reconciled for their offences. If

If any person shall receive the offender or disturbe the arrest, he shall forfeit to the Queene, her Heires and Successors, for every such offence the summe of five pounds. If any offender bee not taken, but escape hee shall forfeit to the Queene for every such escape five pounds.

The Justices of Peace, Justices of Assize, Justices of Oyer and Terminer, all Mayors, Bayliffs, Justices of Peace, within any City, Borough, or Town-corporate, have power and authority to enquire into, heare and determine the offences and misdemeanors aforesaid, and to set fines and amer-ciements therefore.

This Act doth not take away any authority, jurisdiction, &c. of Ecclesiasticall Lawes then in force.

This Statute repeales all Statutes made against the Church of *Rome*, particularly the Statute of 21 H. 8. 13. made against plurality of Benefices, taking of Farmes by Spirituall men, and *non residence*. The Statute of 23 H. 8. 9. That no person shall be cited out of his Diocess wherein he or she dwelleth, except for certain cases. Stat. 24 H. 8. 12. That Appeals in such cases as had been proved in the See of *Rome* should not from henceforth be had, nor used but within this Realm. Stat. 25 H. 8. 19. entituled *The submission of the Clergy to the Kings Majesty*. Stat. 25 H. 8. 20. concerning restraints of Payments of Primates and First-fruits of Arch-bishopricks & Bishopricks to the See of *Rome*. Stat. 25 H. 8. 21. concerning the exoneration of the Kings Subjects from exactions and impositions before that time paid to the See of *Rome*, and for having licences and dispensations within this Realm, without suing further for the same. Stat. 26 H. 8. 1. concerning the Kings being supreme head of the Church, and to have Authority to reform, and redresse all errors, heresies, and abuses in the same. Stat. 26 H. 8. 14. for nomination and confirmation of Suffragans within this Realm. Stat. 27 H. 8. 15. whereby the King should have power to nominate 32. persons of his Clergy and Lay Fee for making Ecclesiasticall Lawes. Stat. 28 H. 8. 10. Extinguishing the Authority of the Bishop of *Rome*. Stat. 28. H. 8. 16. For release of such as then had obtained pretended licences and dispensations from the See of *Rome*. Stat. 28 H. 8. 7. for the establishment of the succession of the Imperiall Crown of this Realm, that concerneth a Prohibition to marry within the Degrees expressed in the said Act. Stat. 31 H. 8. 9. authorising the King to make Bishops by his Letters' Patents. Stat. 32 H. 8. 38. concerning precontracts of Marriages, and touching degrees of consanguinity. Stat. 35 H. 8. 3. for ratification of the Kings Stile. The corporall oath made in the Stat. of 35 H. 8. 1. that every Subject of this Realm should be bound to take against the power, authority, and jurisdiction of the See of *Rome*. Stat. 37 H. 8. 17. That the Doctors of the Civill Law which were married might exercise Ecclesiasticall jurisdiction. So much of that Statute of the first Ed. 6. 1. as contains certain Provisions, Pains, Penalties and Forfeitures, for and against such as should by open preachings, expresse words, sayings, writing, printing, overt-deed or act, assume or set forth, That the King of this Realm, for the time being, is not, or ought not to be the supreme head in earth of the Churches of *England* and *Ireland*, nor of any of them; or that the Bishop of *Rome*, or any other person or persons, other than the K. of *England* for the time being, is or ought to be supreme head of the same Churches, or any of them, as in the said Act more at large may appear. It is enacted, that these clauses, and other of the fore-

Anno 1 & 2  
Phil. & Mar.  
cap. 8.



said Act concerning the Supremacy, and all, and every branch, article, words, and sentence in the same, sounding or tending to the Derogation of the supremacy of the Popes Holiness, or the See of *Rome*, and all pains, penalties and forfeitures made against them, that should by any means set forth or extol the said Supremacy, should from thenceforth be utterly void.

It did moreover generally repeal all clauses, sentences and articles of every other Statute made since the 20 *H. 8.* against the supreme authority of the Popes Holiness, or See Apostolick of *Rome*.

The Lords Spirituall and Temporall, and Commons professing themselves reduced and received by their Majesties intercession to the unity of Christs Church, and obedience of the Apostolick See of *Rome*, and the Pope governing the same, did make humble suite to their Majesties to be Intercessors, that by authority of the Popes Holiness, and by the ministration of Cardinall *Poole*, by dispensation, tolleration, or permission, respectively as the case shall require, be abolished these Articles following, and generally all others, when any occasion shall so require, may be provided for and confirmed.

1. That all Bishopricks, Cathedrall Churches, Hospitalls, Colledges, Schooles, and other such foundations now continuing, made by authority of Parl. or otherwise established according to the order of the Lawes of this Realm, since the Schisme, may be confirmed and continue for ever.

2. That Marriages made *infra gradus Prohibitos, consanguinitatis, affinitatis, cognationis spiritualis*, or what might be made void *propter impedimentum Publica honestatis justitia*, or for any cause prohibited by the Canons only, may be confirmed; and children born of those Marriages declared legitimate, so as those Marriages were made according to the Lawes of the Realm for the time being, and be not directly against the Lawes of God, nor in such case as the See Apostolick hath not used to dispenze withall.

3. That institution of Benefices and other promotions Ecclesiasticall, and dispensations made according to the form of the Act of Parliament may likewise be confirmed.

4. That all Judiciall Processes made before any Ordinaries of this Realm, or before any Delegates upon any Appeals, according to the order of the Lawes of this Realm, may likewise be ratified and confirmed.

5. That the Lands and Goods of Bishopricks, Monasteries, Chanteries, &c. dispersed abroad to sundry persons by gift, exchange, purchase, &c. according to the Lawes of the Land for the time being, shall so continue.

It was enacted, that the title of supreme head of the Church, never was nor could be attributed to by any King or Governor.

It was enacted that all Bulls, Dispensations, and Priviledges obtained before the 20 year of *H. 8.* or any time since of the See of *Rome*, and not containing matter prejudiciall to the Imperiall Crown, or Lawes of this Realm, should be put in execution.

This Statute did restore the Pope and Apostolick See, together with the Jurisdiction the Bishops had in the Realm, to all the Authority they had before the 20 of *H. 8.*

It is a very remarkable thing that this Statute does affirme, that nothing done or moved in this Statute should be prejudiciall to the Liberties of the Crown, before the 20 of *H. 8.* and that the Statute of 24 *H. 8. 12.* and the

Statute

Statute of 25 H. 8. cap. 20. which takes away all Ecclesiasticall Jurisdiction from the Pope, and vests it in the King, should be but declaratory of the ancient and common Law of this Land. See *Coke de jure Regis Ecclesiastico* 28. a. b. 31. one of these must necessarily be false.

Thus did Queen Mary restore by Parl. all the Papall Jurisdiction, which was exercised before the 20 of Henry the 8. and would have restored all the Abbey and Chantery Lands taken away by her Father and Brother, had it been in her power; but many alienations, descents, and purchases having been made of them, she was not able to performe it, being a Princess no doubt, wondrous free from sacrilege, zealous and constant in her Religion, mercifull (when her Religion was not concerned) and just: Her mercy appears in her not only pardoning all the Councell, who had subscribed to her disinheriting; but it was thought she would not have taken away the life of the Lady Jane (although guilty of so high a crime, as having actually invaded the Crown) if the Duke of Suffolk her Father (formerly pardoned by the Queens meer grace) had not most unjustly and unthankfully excited her Subjects against her, which together with Wiats Rebellion, for her own security, did necessitate her for her own security to execute her. Her justice appears in this; the Lord Sturton having been at variance with one Hargill and his Son, Gentlemen, knocked the poor Gentlemen on the head, and after cut their throats, and buried their bodies in a Pit 15. foot deep, hoping this villainy would never come to light, or if it did, he assured himself of the Queens favour, being zealously addicted to the Popish Religion; which did him not good, for the Queen abhorred and rejected all mention of Pardon for him, only he had this grace, that the other Murderers were hanged in a hempen, but he in a silken halter,

Description of  
Queen Mary.

*Ecclesiasticall Lawes made in the Reign of Queen Elizabeth.*

IT is declared that in the Reign of H. 8. divers good Lawes and Statutes were made, as well for the utter extinguishing of all usurped and forreign Powers and Authorities of this Realm, and other her dominions and Countries, as also for the restoring, and uniting to the Imperiall Crown of this Realm, the ancient Jurisdiction, Authorities, Superiorities and Preheminencies to the same of right belonging and appertaining; By reason whereof her most humble Subjects from the time of the 25 H. 8. were continually kept in good order, and were disburdened of divers great and intollerable charges and vexations, before that time unlawfully taken and exacted by such foreign Power and Authority as before that was usurped. \* And to the intent that all usurped power, Spirituall and Temporall, might for ever be extinguished, and never be used or obeyed in this Realm, or any other her Majesties Dominions: It was therefore by the Authority of that Parliament enacted, That no forreign Prince, Person, Prelate, State or Porentate Spirituall or Temporall, should at any time after the last day of that Session of Parliament use, enjoy, or exercise any manner of Power, Jurisdiction, Authority, Preheminence or Priviledge Spirituall or Ecclesiasticall within this Realm, or within any other the Queens Dominions or Countries, that then were, or hereafter should be; but from henceforth the same should be clearly abolished out of this Realm, and all other her Dominions for ever. And it was then also established and enacted, That such Jurisdiction, Priviledges

Anno 1. Eliz.  
cap. 1.

The Statute of  
1 & 2 Ph. &  
Ma. cap. 8.  
which restored  
to the Pope all  
which this Stat.  
takes away, de-  
clares that no-  
thing was done  
prejudiciall to  
the Crown in  
so doing.



ledges, Superiorities and Preheminences, Spirituall and Ecclesiasticall, as by any Spirituall and Ecclesiasticall Power or Authority had heretofore been, or might lawfully be exercised or used for the visitation of Ecclesiasticall state and persons, and for reformation, order and correction of the same, and of all manner of errors, heresies, schismes, abuses, offences, contempts and enormities, should for ever by authority of that Parliament be united and annexed to the Imperiall Crown of this Realm : And that the Queen her Heirs and Successors, Kings or Queens of this Realm, should have full power and authority by virtue of that Act, by Letters Patents under the Great Seal of England, to assigne, name and authorize, when, and as often as the Queen, her Heirs and Successors shall think meet and convenient : and for such and so long time as should please the Queen, her heirs and successors, such person or persons being naturall born Subjects to the Queen, her heirs or successors, as the said Queen her heirs or successors should think meet, to exercise, use, occupy and execute under the said Queen, her heirs and successors, all manner of Jurisdictions, Priviledges and Preheminences in any wise touching or concerning any Spirituall or Ecclesiasticall Jurisdiction within these Realms of England or Ireland, or any other her Dominions and Countries ; and to visite, reform, redress, order, correct and amend all such errors, heresies, schismes, abuses, contempts and enormities whatsoever, which by any manner spirituall, or ecclesiasticall Power, Authority, or Jurisdiction, could or might lawfully be reformed, ordered, redressed, corrected, restrained, or amended to the pleasure of Almighty God, the encrease of virtue, and conservation of the peace and unity of this Realm. And that such person or persons so to be named, assigned, authorized and appointed by the said Queen, her heirs and successors, after the said Letters Patents to him or them made and delivered, as is aforesaid, should have full power and authority by virtue of that Act, and of the Letters Patents under the said Queen, her heirs and successors, to exercise, use, and execute all the premisses according to the tenor and effect of the said Letters Patents, any matter or cause to the contrary in any wise notwithstanding.

This Statute doth create the oath of Supremacy to be taken by all men who hold any Office, or take from the Queen her heirs and successors any Fees or Wages within this Realm, or other her Highnes Realms or Dominions : the form and tenor of it is,

*I A. B. doe utterly testifie and declare in my conscience, that the Queens Highness is the only supreme Governor of this Realm, and all other her Highness Dominions and Countries, as well in all Spirituall or Ecclesiasticall things or causes, as Temporall; and that no forrein Prince, Person, Prelate, State, or Potentate hath or ought to have any Jurisdiction, Power, Superiority, Preheminence or Authority Ecclesiasticall or Spirituall within this Realm; and therefore I doe utterly renounce and forsake all forrein Jurisdiction, Powers, Superiorities and Authorities, and do promise, that from henceforth I shall bear faith and true allegiance to the Queens Majesty, her Heirs, and lawfull Successors, and to my power shall assise and defend all Jurisdictions, Priviledges, Preheminences and Authorities, granted or belonging to the Queens Highness, her Heirs and Successors, or united and annexed to the Imperiall Crown of this Realm; So help me God, and the contents of this Book.*

If any person dwelling or inhabiting within this Realm, or any other of the Queens, should within 30. dayes after the determination of the Session of  
that

that Parliament, by Writing, Printing Teaching, &c. maintain any forreign Power or Jurisdiction, Ecclesiasticall or Spirituall; or shall advisedly put in use any such forreign Power or Jurisdiction within any of her Highness Dominions, he and his Aiders, Abettors, Counsellors, &c. shall forfeit to the Queen, her Heirs and Successors, all his goods and chattels, as well reall as personall.

If any person so convicted be not worth in Goods and Chattels the summe of 20s, every such person upon conviction, over and besides the forfeiture of his Goods and Chattels, shall suffer imprisonment by the space of a whole year without Bail or Mainprise.

And that all and every the Benefices, Prebends, and other Ecclesiasticall promotions and dignities of every person spirituall so offending and being attaint, shall be utterly void; and the Patron and Donor may present, as if the Incumbent were actually dead. For the second offence the party offending shall incur the danger of a Premunire. For the third offence after conviction and *Attainder* the party offending shall suffer death, and forfeiture of all his Goods, as in case of High Treason.

The offender must bee impeached for preaching, teaching or speaking any thing against the Premisses, within a yeere after such preaching, teaching or speaking: and if any person shall be imprisoned for preaching, teaching or speaking against this Statute, and if he be not indicted within the space of one half yeer next after his offence, that he be discharged and set at liberty.

No matter of Religion, or cause Ecclesiasticall made by this Parliament shall be judged Error, Heresie, Schism, or schismaticall opinion.

Such Persons as shall bee authorized by Letters Patents under the Broad-seale of England, shall have jurisdiction, power or authority spirituall to visite, reform, order or correct any errors, heresies, schisms, abuses or enormities: But by virtue of this Act they have not authority to determine or adjudge any thing to bee heresy, but only such as heretofore have beene determined by Canonick-Scripture, or the 4 first generall Councils, or any of them, or by any Generall Councell, wherein the same was declared heresie by expresse and plaine words of Scripture; or such as should be determined Heresie by the high Court of Parl. with the assent of the Clergy in their Convocation.

This Statute revives the 23 H. 8. 9. 24 H. 8. 12. 25 H. 8. 10. 25 H. 8. 21. 26 H. 8. 14. 28 H. 8. 16. So much of the Act of the 32 H. 8. 38. concerning precontracts of Marriages, and touching degrees of Consanguinity as by the 2 Ed. 6. 23. was not repealed, the 37 H. 8. 17. the 1 Ed. 6. 1.

This Act repeales the Statute of the 1 & 2 Ph. & M. 6. the 1 & 2 Ph. & M. 8, except those things touching the Premunire in the said Statute: It repeales the 5 R. 2. 5. the 2 H. 4. 15. the 2 H. 5. 7. made for the punishment of Heresies, by fire and faggot.

This statute repeales the statute of the first of *Mary* and the 2, and revives Stat. 1 Eliz. cap. 2 the statute of the 5 & 6 of *Ed. 6.* for the uniformity of Prayer and administration of the Sacraments, with the alteration or addition of certain Lessons to be used every Sunday of the yeere, and the forme of the Letany altered and corrected, and two sentences only added in the delivery of the Sacrament to the Communicants.

If any Parson, Vicar, or other whatsoever Minister, that ought or should say or sing Common-Prayer, mentioned in the said Booke, in such Cathe-



drall or Parish-Church, or other places where he should Minister the same, in such manner and forme as is mentioned in the said Booke, refuse to doe the same, or use any other forme, or shall preach, declare or speake any thing in derogation of the said booke or any thing therein contained, or any part thereof, and shall thereof be lawfully convicted, according to the Lawes of the Land, by the Verdict of 12 men, or confession, or notorious evidence of the fact; shall forfeit to the Queene, &c. for the first offence, the profits of one whole yeere, next after such conviction, of all his spirituall Benefices, and suffer imprisonment for the space of six moneths without Bayle or Mainprize.

If any such person, once convicted concerning the Premisses, shall after such conviction offend, and be thereof lawfully convicted, shall suffer imprisonment for the space of one whole year, and be deprived *ipso facto* of all his spirituall promotions; and that it shall be lawfull for all Patrons and Donors of such spirituall promotions to present or collate to the same as if the person or persons so offending were dead.

If any person be convicted the third time of the premisses, he shall *ipso facto* be deprived of all his spirituall promotions, and shall suffer imprisonment during life.

Any person that shall offend, and be convicted in form aforesaid, concerning any of the premisses, not being beneficiall, or having any spirituall promotion, shall for the first offence after such conviction, suffer imprisonment for the space of one whole year without Bail or Mainprize: and for the second offence, after lawfull conviction, shall suffer imprisonment during life.

If any person shall doe or speak any thing in derogation of the book of Common-prayer, or disturb or interrupt any Parson, Vicar, or other Minister in any Cathedrall or Parish Church or Chappel in the celebration of the Common-prayer, or ministration of the Sacraments; or shall compell or cause any other Service to be celebrated, being thereof lawfully convicted, shall for the first offence forfeit to the Queen, &c. the summe of one hundred Marks, and for the second offence the summe of four hundred Marks, and for the third offence he shall forfeit all his Goods and Chattels, and suffer imprisonment during life.

If any person shall for the first offence be convicted of the premisses in form aforesaid, and shall not pay the sum to be paid by virtue of his conviction, that instead thereof he shall suffer imprisonment for the space of 6. moneths without Bail or Mainprize; and he that shall not pay for the second conviction shall suffer imprisonment for the space of 12. moneths without Bail or Mainprize.

Every person shall (having no lawfull or reasonable excuse to be absent) diligently and faithfully endeavour to resort to the usuall places where Common-prayer and such Service of God shall be used, upon Sundayes and other dayes appointed to be kept holy, and there abide orderly and soberly during the time of Common-prayer, Preaching, and other Service of God, upon pain of punishment by censures of the Church, and twelve pence to be levied by the Church-wardens to those of the poor of the Parish by way of distress.

The Ordinaries, and all other Officers Ecclesiasticall, as well in places exempt as not exempt within their Diocess, have power and authority by this Act

Act to correct, and reform, and punish by Church censures all who shall offend within their Jurisdictions.

The Justices of Oyer and Determiner, or Justices of Assize in open and generall Sessions have power to hear, determine and punish these offences, yet so that every Arch-bishop and Bishop in their severall Diocesses by virtue of this Act may associate or joyn themselves with the said Justices.

No person shall be molested for any offences abovesaid, unlesse he be indicted at the next generall Sessions, next after such offences are committed.

All Lords of Parliament for their third offence shall be tried by their Peers.

Chiefe Officers of Cities and Boroughs have the like authority to hear and determine the offences aforesaid, as the Justices of Assize, and Oyer and Determiner have.

Arch-Bishops, Bishops, their Chancellors, Commissaries, Arch-Deacons and other Ordinaries, having any peculiar Ecclesiasticall Jurisdiction, have by virtue of this Act power in their Visitations, Synods, and elsewhere within their Jurisdictions, to enquire and take the accusations, and informations of all the offences aforesaid, and to punish the same by Admonition, Excommunication, Sequestration, or Deprivation, and other censures, in like form as heretofore has been used by the Queens Ecclesiasticall Laws.

Any person offending in the premisses, and punished therefore by the Ordinary, having a testimoniall thereof under the Ordinaries Seal, shall not for the same offence be convicted before the Justices; and likewise punished for the first offence by the Justices, he shall not again receive punishment of the Ordinary.

Such Ornaments of the Church and of the Ministers shall be retained and be in use, as was in this Church of England by authority of Parliament in the 2 year of the Reign of Ed. 6. untill other Order shall be taken by authority of the Queen, with the advice of the Commissioners appointed and authorised under the Great Seal of England for causes Ecclesiasticall, or of the Metropolitan of the Realm.

Anno 5 Eliz.  
cap. 1.

It was enacted, That whatsoever person inhabiting in the Queens Dominions, who by word or deed should maintain that the Bishop of Rome had any authority or jurisdiction in any of the Queens Realms or Dominions, should incur the danger of a *Premunire*.

If any man shall the second time maintain the Pope to have any jurisdiction or authority in any of the Queens Dominions, it shall be Treason.

The Oath set forth in the first *Eliz. cap. 1.* shall be taken of all Ecclesiasticall Orders, of all degrees in the University, of School-masters, Utterbar-risters, Benchers, Readers, Ancients, Pronotaries, Attorneys, Philizers, Sheriffs, Escheators, Feodaries, Officers of the Common-Law, Officers of any Court: but none above the degree of a Baron may be compelled. The Bishop may tender the oath to any spirituall person in his Diocese. The Lord Chancellor or Keeper shall direct Commissions under the Broad-seal to any person or persons giving them authority to minister the oath to any such persons, as by the aforesaid Commission, the said Commissioners shall be authorised to tender the oath unto.

Any person aforesaid refusing to take the Oath, and being thereof legally convicted within one year, shall for the first offence incur the danger of a *Premunire*; and for the second shall suffer as in case of High Treason.

Every



Every Knight, Citizen, Burghers, or Baron for any of the Cinque Ports, shall take the said Oath, and in case of refusall shall be deemed no Knight, Citizen, Burghers or Baron.

Anno 13 Eliz.  
cap. 1.

It was enacted, That if any person in the Queens Dominions should use or put in use any Bull of absolution, or reconciliation formerly had, or afterward to be obtained from the Bishop of *Rome*, his successors, or any claiming under him: or if any person shall by virtue of such Bull, take upon him to grant or promise to any person, any such absolution or reconciliation: or if any person shall willingly receive such absolution or reconciliation, or shall obtain from the Bishop of *Rome* any manner of Bull, Writing, or Instrument containing any thing whatsoever, or shall publish any such Writing or Instrument, shall be adjudged a Traitor.

The aiders, comforters, and maintainers of the offenders after offence, shall incur the pains and penalties of a *Premunire*.

Every person to whom such Absolution, Reconciliation, Bull, Writing or Instrument shall be offered, moved, or perswaded to be put in use, and shall conceal such motion or perswasion, and not disclose the same within six weeks following, to some of the Queens Councell, or to the President, or Vice-President of the North parts, or in the Marches of *Wales*, shall incur the danger and penalty of a *Premunire*.

The bringers into the Realm, or using any *Agnus Dei*, Crosses, Pictures, Beads, &c. from the Bishop of *Rome*, or any claiming authority from the Bishop of *Rome* to consecrate the same, as well the parties bringing, as the parties receiving, shall incur the danger of a *Premunire*.

But if any person to whom such *Agnus Dei*, &c. shall be tendred, shall apprehend the person tendring the same, and bring him to the next Justice of Peace within the County where the said tender shall be made, if it be in his power; or for lack of ability, shall within three dayes disclose the names of the person so tendring, or his place of resort to the Bishop of that Diocese, or to any Justice of Peace of that Shire where such persons are resiant; or if any person receive such *Agnus Dei*, &c. and shall within one day after receipt deliver the same to any Justice of Peace within the same Shire, that then every such person shall not incur the penalties abovesaid.

All they who within three moneths after dissolution of the Parliament, shall bring in, and deliver all such Bulls, Writings, Instruments of Reconciliation to the Bishop of the Diocese wherein such absolution had been made, to be cancelled, and confesse and acknowledge his offence, and desire to be received into the Church of *England*, shall be clearly pardoned of such offence. And every person who had received any absolution from the Bishop or See of *Rome*, or any reconciliation unto the Bishop or See of *Rome*, since the first year of the Queen, and shall within three moneths after any Session or dissolution of the Parliament come before the Bishop of the Diocese where such absolution or reconciliation was made, and publicly acknowledge his offence therein, and humbly desire to be restored and admitted into the Church of *England*, shall be clearly pardoned of such offence.

If any Justice of Peace, to whom any matter, or offence before mentioned, shall be uttered, doe not within 14. dayes after signifie and declare the same to some one of the Queens Privie Councell, that then such Justice shall incur the danger of a *Premunire*.

Noble-men shall be tryed by their Peers.

Saving

Saving to all persons, Bodies politique and corporate, their heirs and successors, others then the said offenders and their heirs, all rights, titles, possessions, &c. as they or any of them had, at the day of committing the offence aforesaid, or before.

Stat. 23 *Eliz. cap. 1.* makes it Treason for any who shall have, or pretend to have power, or shall by any means put in practice to absolve, persuade, or withdraw any of the Queens Subjects from their naturall obedience; or withdraw them for that intent from the Religion now by her Highness authority established, to the Romish Religion: Or if any person shall by any means be willingly absolved, or willingly be reconciled, or shall promise any obedience to any forrein pretended Authority, Prince, State, or Potentate, and be thereof lawfully convicted, shall suffer as in case of High Treason.

The aiders, maintainers and concealers, who shall not within twenty daies at furthest disclose the same to some Justice of Peace or higher Officer, shall suffer as in case of Misprision of Treason.

Every person who shall sing or say Masse, shall forfeit 200 marks, and suffer imprisonment during one whole year: And every person who shall willingly hear Masse, shall forfeit one hundred marks, and suffer imprisonment for a year.

Every person above sixteen years of age, who shall not repair to some Church, Chappel or usuall place of Common-prayer, and forbear the same, contrary to the Stat. 1 *Eliz.* for uniformity of Common-prayer, shall forfeit 20 pounds for every moneth, and over and besides, if he or she shall forbear for the space of 12. moneths after certificate thereof in writing made into the Kings Bench by the Ordinary, a Justice of Assize and Goale-delivery, or a Justice of peace of the County where such offender shall dwell or be, shall for his obstinacy be bound with two sufficient Sureties in the sum of 200 pounds at least to the good behaviour, and so continue bound, untill such time as he shall conform himself and come to Church, according to the true intent of the Statute of the said 1 *Eliz.*

Every person, Body politique or corporate, who shall maintain a School-master who shall not repair to the Church as aforesaid, or be allowed by the Ordinary of the Diocese where such School-master shall be kept, shall forfeit for every moneth ten pound: And such School-master presuming to teach any thing contrary to this Act, and being thereof lawfully convicted, shall be disabled to be a Teacher of Youth, and shall suffer imprisonment without Bayl or Mainprise for the space of a year.

No Ordinary or their Ministers shall take any thing for the allowance of any Schoole-master.

All offences aforesaid, and all offences against the first *Eliz. 1.* 5 *Eliz. 1.* 13 *Eliz. 2. &c.* are inquirable into by the Justices of peace, and other Justices named in the said Act, within a year and day after such offences committed. Justices of Oyer and Terminer of Assize, of Goale-delivery, in their limits, Justices of Peace in their Quarter-sessions, have power to hear and determine the offences aforesaid (except Treason, and Misprision of Treason).

Every person guilty of any offence against this Statute other then Treason & Misprision of Treason, which shall before he be indicted, or at his Arraignment before Judgement, submit and conform himself before the Bishop of the Diocese where he shall be resident, and before the Justice of Peace where



he shall be arraigned or tried, (having not before made like submission) shall upon his recognition of such submission in open Assises or Sessions in the Connty where such person shall be resident, be discharged of all the said offences.

The forfeitures of the moneys limited by this Act shall be divided into three equall parts, whereof one third part to the Queen to her use, another for the relief of the poor in the Parish where such offence is committed, to be delivered by warrant of the principle Officers in the receipt of the Exchequer, without further warrant from her Majesty; the other third part to such person as will sue for the same in any court of Record, in which no Escoin, or Protection, or Wager of Law shall be allowed. He that shall forfeit such summes as are specified in this Act, and be not able, or shall not pay the same within 3. moneths after Judgement, shall be committed to prison and there remain untill he have paid the said summes, or conform himself to goe to Church.

He that usually on Sunday shall have in his house the Divine Service as it is established, and be thereat usually present, and not obstinately refuse to come to Church, and shall at least four times in the year be present at the Divine Service in his Parish Church, or in some open Church or Chappell of ease, shall incur no damage, nor danger by this Act.

Every Grant, Conveyance, Bond, Judgement and Execution, of covetous purpose to defraud the Queen, or any other person, shall be holden utterly void.

Tryall of a Peer for any Treason, or misprision of Treason, by this Act shall be by his Peers.

This Act, nor any thing contained therein (is said) not to extend to take away any, or abridge the authority or jurisdiction of the Ecclesiasticall Censures, for any cause, or matter, but that Arch-Bishops and Bishops, and other Ecclesiasticall Judges may do and proceed, as before the making of it.

Stat. 27 Eliz.  
cap. 2.

All Jesuits made within or without the Realm since the Nativity of *St. John* the Baptist, in the first year of the Queen, shall within 40. dayes next after the Session of Parliament, if they be not wind-bound, depart out of *England* and other the Queens Dominions.

If any Jesuit, Seminary Priest, or other such Priest, Deacon, or Religious or Ecclesiasticall person whatsoever, born within the Dominions of the Queen, and made since the feast of the Nativity of *St. John* in the first year of the Queen, or hereafter to be made by any Authority from the Church of *Rome*, shall after the said forty dayes after the Session of Parliament (other then in such speciall cases as in this Act is expressed) be found in any of the Queens Dominions, every such person shall be adjudged a Traitor.

All they which shall receive any such Jesuit or Priest after such time shall be adjudged a felon without benefit of Clergy.

If Any Subject of *England* then being, or after shall be of, or brought up in any Colledge of Jesuits, or Seminaries already erected, or to be erected, out of the Realm, shall not within six moneths next after Proclamation in that behalf made in *London*, under the broad Seal, return into this Realm, and within two dayes after, before the Bishop of the Diocesse, or two Justices of the peace of the County where he shall arrive, submit himself to her Majesty and her Lawes, and take the Oath set forth in the first year of her  
Reign;

Reign; That then every such person which shall otherwise return; shall be taken and deemed as a Traitor.

Whosoever shall any wayes send relief to any Jesuit or Seminary beyond the seas, or give any maintenance to any Colledge of Jesuits or Seminaries, shall incur the danger of a *Premunire*.

None during the Queens life shall send his or her Child, or other person (except Merchants, or such only who serve in their Trade as Merchants, or Mariners) beyond the Seas, without the Queens speciall licence, or under four of the Councells hands; upon the penalty of one hundred pounds.

Every offence committed against this Act may be heard and determined as well in the Kings Bench, as also in any County within this Realm, or any of the Queens Dominions where the offence shall be committed; or where the offender shall be apprehended.

This Act shall not extend to any Jesuit, &c. before mentioned, as shall within the said 40. dayes, or within 40. daies after he come into the Realm, submit himself to some Arch-bishop or Bishop of this Realm, or to some Justice of Peace within the County where he shall arrive, and doe thereupon truly and sincerely before the Arch-bishop, Bishop, or Justice of Peace, take the said Oath set forth the first of *Eliz.* and under his hand confesse afterward to continue in due obedience to the Queens Lawes made, or to be made in causes of Religion.

Peers shall be tried by their Peers for any offence made Treason, Felony, or *Premunire* by this Act.

Any person being a Subject of this Realm, which shall after the said 40. daies know any such Jesuit, or Priest, &c. and shall not discover the same to some Justice of Peace, or Higher Officer within 12. dayes, every such person shall be fined and imprisoned according to the Queens pleasure; and every such Justice of Peace, or higher Officer, which shall not discover the same within 28. dayes to some of the Queens Councell; or to the President, or Vice-president of the Queens Councell established in the North or Marches of *Wales*, then he or they so offending shall forfeit 200 Markes.

Such of the Privy Councell, President, or Vice-president abovesaid, to whom such information shall be made; shall thereupon deliver a note in writing, subscribed by his own hand, to the party by whom he shall receive such information, testifying that such information was made to him.

All such Oaths, Bonds and Submissions as shall be made, by force of this Act shall be certified into the Chancery, by such Parties before whom the same shall be made, within three moneths after such submission, upon pain of forfeiture of 100 l. for every such offence to the Queen.

If any person so submitting himself shall within 10. years after come within 10. miles of the place where her Majesty shall be, without speciall licence had from her Majesty under her hand, that then such person to have no benefit of such submission.

Enacts, That every Feofment, Gift, Grant, Conveyance, Alienation, Estate, Lease, Encumbrance, Limitation of use, of, or out of any Lands, Tenements, Hereditaments whatsoever had or made since the beginning of the Queens Reign, or after, by any person who had not repaired; or shall not repair to some Church, Chappel, or usuall place of Common-prayer; or which is or shall be revokable at the pleasure of such offender, or in any wise directly or indirectly, intended or meant, to, or for the behoofe or disposition of such



offendor, or in consideration whereby his Family may be maintained, shall be deemed and taken for utterly void, &c.

Every conviction heretofore recorded for any offence before mentioned, not already estreated or certified into the Queens Court of Exchequer, shall from the Justices before whom the record of such conviction shall be remaining be estreated and certified into the Exchequer, before the end of the next Easter Term in such convenient certainty, for the time and other circumstances, as the Court may thereupon award out proceffe for seisure of the Lands and Goods of every such offender as hath not paid their forfeitures according to Statutes in such case provided. And every conviction hereafter for any offence before mentioned, shall be in the Court called the Kings Bench, or at the Assises, or generall Goal-delivery, and not elsewhere, and shall from the Justices before whom the Record of such conviction shall remain, be estreated and certified into the Exchequer, before the end of the Term next ensuing after every such conviction, in such convenient certainty as is aforesaid.

Every offender in not repairing to Divine Service, and hath been heretofore convict, and not made his submission, and been conformable according to the true intent of this Statute, shall without other indictment or conviction pay into the receipt of the Exchequer all such summes of money as according to the rate of twenty pounds for every moneth since the same conviction, in manner following, *viz.* one Moity before the end of Trinity Term, the other Moity before the end of Hilary Term, or at such other times as the Lord Treasurer, Chancellor, and Chief Baron, or any two of them, shall by composition upon good security be limited before the end of the said Trinity Term, if any such composition shall happen to be: And shall also in every Easter and Michaelmas Term, untill such time as the same person do make such submission, pay into the Exchequer 20 l. for every moneth, which shall incur in all that mean time.

For default of Payment of the said 20 l. a moneth in every Easter and Michaelmas Term, after such conviction, the Queen by proceffe out of the said Exchequer may take, seize and enjoy all the Goods, and two parts as well of all the Lands and Tenements, &c. of such offender, as of all other Lands and Tenements liable to such seisure, by the true intent of this Act, leaving only a third part for the reliefe of the offender, his Wife Children and Family.

For the more speedy conviction of such offender, the Indictment shall be sufficient although it be not mentioned, that the offender was, or is inhabiting within the Realm of *England*, or any other of the Queens Dominions: But if it shall happen that any such offender were not within any of the Queens Dominions, that in such case the party shall be relieved by plea to be put in, in that behalf and not otherwise. And upon Indictment a Proclamation shall be made the same Assises or Goal-delivery, that the party indicted shall yeeld his body to the Sheriff: and if at next Assises or Goal-delivery the said party shall not make appearance of Record, that then such default shall be deemed a sufficient conviction in Law.

If any such offender shall make submission, and become conformable according to the form of the Statute made in the 23 of *Eliz.* or shall fortune to die, that then no forfeiture of 20 l. a moneth, nor seisure of Lands, from and after such submission and conformity, or death, and full satisfaction of all arrearages

arrearages of 20 l. monethly before such seisure due, or payable, shall enforce, or be continued against such offender, so long as he shall continue in coming to divine Service according to the intent of the Statute.

The Lord Treasurer of *England*, Chancellor, and chief Baron, or any two of them may assigne and dispose of the full third part of the twenty pounds for every moneth, paid into the receipt of the Exchequer towards the relief of the Poor, of Houses of correction, and of impotent and maimed Souldiers.

This Act, or any thing contained in it, doth not in any wise extend to make void or impeach any Grant or Lease made *bonâ fide*, without fraud or covin, and not revocable at the will and pleasure of the offender.

This Act, or any thing contained therein, shall not in any wise be construed to continue any seisure of any Lands or Tenements of such offender in her Majesties hands, after the said offenders death, which Lands or Tenements he shall have or be seised of only for term of life, or in right of his wife.

For the preventing of such great inconveniences and perils as may happen and grow by the wicked practices of seditious Sectaries and disloyall persons, it was enacted, That every person above sixteen years of age that shall obstinately refuse to come to Divine Service, established by Law, and shall forbear the same by the space of a moneth without lawfull excuse, or shall at any time after forty dayes after the Session of that Parliament By word or writing advisedly goe about to move or perswade any of the Queens Subjects, or any other within her Realms or Dominions, to deny or withstand her Majesties power or authority in causes Ecclesiasticall, united and annexed to the Imperiall Crown of this Realm, or shall advisedly perswade any person to forbear coming to Church to hear Divine Service established; or to come to, or be present at any unlawfull Assemblies, Conventicles, &c. upon pretence of Religion, contrary to the established Lawes: Or if any person shall obstinately refuse to repair to some usuall place of Common-prayer, and shall forbear to hear Divine Service by the space of a moneth, or shall after forty daies willingly joyne in any such Assemblies, Conventicles, &c. under colour of exercising Religion, contrary to the Laws of this Realm; That every person so offending, and being thereof lawfully convicted, shall be committed to prison without bail or mainprise, untill they conform to come to Church and hear Divine Service according to Law, and make such submission and declaration, as in this Act is afterward declared and appointed.

*Stat. Anno 35  
Eliz. cap. v.*

If any person who shall offend as aforesaid, shall not within three moneths after they be convicted, conform themselves to the obedience of the Laws, in coming to Church to hear Divine Service, and in making such publick confession and submission as in this Act is appointed, being thereunto required by the Bishop of the Diocese, or any Justice of Peace where the person shall happen to be, or by the Minister or Curate of the Parish: that in every such case, every such offender, being thereunto warned by any Justice of Peace of the County, shall upon his or their corporall oath, before the Justices of Peace in the open Quarter-sessions, or at the Assises abjure the Realm, and all other the Queens Dominions for ever, unless her Majesty shall licence the party to returne; and shall depart out of the Realm at such Port, and within such time as shall be appointed by the said Justices before whom the said abjuration was made, unless the offender be letted by such lawfull and reasonable means, as by the common Lawes are permitted in cases of abjuration



of Felony; and in such cases of let or stay then within such reasonable time after as the Common Law requires in case of Abjuration for Felony; the Justices of Peace before whom any such abjuration shall be made, shall cause the same to be presently entred into record before them, and shall certifie the same to the Justices of Assizes and Goal-delivery of the said County at the next Assizes.

If any such offender, which by the tenor of this Act is to be abjured, shall refuse to make such abjuration, and shall not goe to such Haven within such time appointed, and depart out of the Realm, or after such departure shall return without licence; that in such case the party offending shall suffer as in case of Felony without benefit of the Clergy.

If any person offending against this Act, shall before he be required, as aforesaid, to make such abjuration, repair to some Parish Church on some Sunday or Festivall, and then and there hear Divine Service, and before Sermon or reading of the Gospell make publick and open submission and declaration in conformity to the Lawes according to this Act, that then every such penalties inflicted by this Act be discharged. The submission to be made is.

*I A. B. doe humbly confesse and acknowledge that I have grievously offended God, in contemning her Majesties Godly and lawfull Government and Authority, by absenting my self from Church and hearing Divine Service, contrary to the Godly Lawes and Statutes of this Realm; and in using and frequenting disordered and unlawfull Conventicles and Assemblies under pretence and colour of exercise of Religion. And I am heartily sorry for the same, and do acknowledge and testifie in my conscience, that no other person hath or ought to have Authority over her Majesty. And I doe promise and protest without any dissimulation, or any colour or means of any dispensation, That from henceforth I will from time to time obey and perform her Majesties Lawes and Statutes, in repairing to the Church and hearing Divine Service, and do my uttermost endeavor to perform the same.*

The Minister of every Parish where such submission and declaration shall be made, shall presently enter the same into a book to be kept by every Parish for that purpose, and within ten dayes after certifie the same in writing to the Bishop of the Diocess.

If any such offender after such submission shall afterwards relapse, and obstinately refuse to repair to some Church, or usuall place of Divine Service, or shall be present at any such Conventicles, &c. under colour of exercise of Religion, contrary to her Majesties Lawes: That then every such offender shall lose the benefit he might have had by virtue of his Submission.

If any person shall hereafter relieve, maintain, or keep in his house or otherwise any person which shall obstinately refuse to come to some Church, or usuall place of Common-prayer, or shall forbear the same by the space of a moneth; that then every such person so offending after such notice given him by the Ordinary of the Diocesse, or any Justice of Assize of the Circuit, or any Justice of Peace of the County, or any Minister, Curate or Churchwarden of the Parish where such person shall be, shall forfeit to the Queen for every person so relieved after such notice, forty pound for every moneth, that he or they shall relieve, &c. any person so offending.

This Act shall in no wise extend to punish or impeach any person for relieving

lieving or keeping his Father, Wife, Mother, Child, Ward, Brother or Sister, or his Wives Father or Mother, not having any certain place of habitation of their own, or the Husbands or Wives of any of them : or for relieving, maintaining or keeping any such person as shall be committed by Authority to the custody of any by whom they shall be so relieved or maintained. These two last clauses are repealed by the 3 Jac. 4.

All duties, forfeitures and payments, due to the Queene by virtue of this Act, or the Act of the 23 of Eliz. concerning Recusants, may be recovered and levied to her Majesties use by action of debt, bill, plaint, information or otherwise, in any of the Courts called the Kings bench, Common-pleas, or Exchequer, in such sort as by the ordinary course of the Common-Law, any other debt due by any person in any other Case might be recovered or levied, where no Effoin, Protection or Wager of Law bee admitted.

The third part of the Penalties had or received by virtue of this Act, shall be employed and bestowed to such good and charitable uses, in such manner and forme as is limited and appointed in the Statute made in the 29 Eliz. c. 6. concerning Recusants.

No popish Recusant or feme covert shall be compelled to abjure by this Act. Every person that should abjure by virtue of this Act, and refuse, being thereunto required as aforesaid, shall forfeit to the Queene all his goods and chattels for ever, and his Lands and Tenements during life; the wife of any such offender shall not lose her Dowre, nor any corruption of blood shall grow or be, by reason of any offence mentioned in this Act.

Every Person above sixteene yeeres of age, borne within any of the Queenes Dominions, or made a Denizen, being a popish Recusant, and before the end of that Session of Parliament, convicted for not repairing to some Church or usuall place of Divine-service, but forbearing the same, contrary to the Lawes established, and having a certain place of abode within the Realme, shall within forty dayes next after the Session of Parliament (if they be in the Realme, and not restrained by imprisonment, or by command of her Majesty, or by order of six or more of the Privy-Councell, or by such sicknesse and infirmity of body, that they shall not be able to travell without imminent danger of their life, and in such cases of absence out of the Realme, restraint or stay, then within two daies next after they shall returne into the Realme, and bee enlarged of such imprisonment, or shall be able to travell) repair to their usuall place of abode, and shall not at any time after remove above five miles from thence. Stat. 35 Eliz. cap. 2.

Every person born in any of the Queens Dominions, or Denizen, which had, or should have any certain place of abode within this Realme, which being a Popish Recusant, and thereof lawfully convicted for not repairing to some Church or usuall place of Divine Service, and being within the Realme at the time they shall be convicted, shall within forty dayes after such conviction (if they be not restrained by imprisonment or otherwise, as aforesaid; and in such cases of restraint, then within twenty dayes after they shall be enlarged, or be able to travell) repair to the place of their usuall dwelling, and not at any time after remove above five miles from thence, upon pain of forfeiture of all his Goods and Chattels, and all his Rentes, Lands, Tenements and Hereditaments to the Queen during the life of the offender.

Every



Every Person above sixteene yeeres of age, borne in any of the Queenes Dominions, who hath no certain place of abode within the Relme, and being a popish Recusant, and not usually repairing to some Church, or usuall place of Common-prayer, but forbearing the same, contrary to the Lawes established, shall within 40 daies after the Session of Parliament (if they be within the Realm, and not imprisoned or stayed as aforesaid; and in such case of absence out of the Realm, imprisonment or stay, then within twenty dayes after returne into the Realm, and be enlarged, or able to travell) repaire to the place of byrth, or where the Father or Mother of such person shall then bee dwelling, and shall not remove above five miles from thence, upon paine of forfeiting all his goods and chattels, and all his Lands, Tenements, Hereditaments, Rents and Annuities to the Queene, during the life of the Offendor.

Every offendor aforesaid that hath Lands or Tenements, by copy of Court-Roll, &c. shall forfeit all such copy-hold estates, during the life of the offendor (if his estate so long continue) to the Lord, of whom they are immediatly holden (if the Lord be not a popish Recusant, nor convicted for not coming to Divine Service, nor seized upon trust for such Recusant) and in such Case the forfeiture to bee to the Queenes Majesty.

All such Persons as by this Act are to make their repaire to their place of dwelling, or to the place of their byrth, or where their Father and Mother shall be dwelling, and not to passe above five miles from thence, shall within twenty dayes after their comming to any of the said places, notifie their coming thither, and present themselves, and deliver their true names in writing to the Minister and Curat of the Parish, and to the Constable, Headborough or Tything-man of the Town, and thereupon the Minister or Curate shall presently enter the same into a booke to be kept in every parish for that purpose; and afterward the said Minister or Curate, and the said Constable, Headborough or Tything-man, shall certifie the same in writing to the Justices of Peace of the same County, at the next quarter Sessions and the said Justices shall enter or cause the same to be entred by the Clerke of the Peace in the Rolls of the same Sessions.

Every popish Recusant (not being a Feme covert, and not having a state of inheritance of free-hold to the cleere yeerely value of twenty marks, or in goods and chattels to the value of forty pounds) that shall not within the limited time repaire to the usuall place of his abode, or to the place of his birth, or the dwelling of his Father or Mother; and thereupon notifie their coming, and present themselves, and deliver their true names in writing to the Minister or Curate of the Parish, and to the Constable, Headborough or Tything-man of the Towne, within such time, and in such manner as aforesaid, or shall after remove five miles from thence, and shall not within three moneths next after such person shall be apprehended, conform himself to resort usually to divine Service, and in making such publique confession and submission, as hereafter is expressed, being thereunto required by the Bishop of the Diocesse, or any Justice of Peace in the County where the same person shall chance to be, or by the Minister or Curate of the Parish; That in every such case, every such offendor, being thereunto warned by any two Justices of Peace, or Coroner of the County where such offendor shall be, shall upon his corporall Oath before any two Justices of Peace or Coroner or the same County, abjure this Realme, and all Dominions of the Queenes for ever,

ver, and thereupon shall depart the Realm in such time as shall be assigned by the said Justices or Coroner, unlesse hindred by such reasonable means, as by the Common Law is allowed in cases of abjuration of felony; and in such cases within such reasonable time after as the Common Law requireth in case of abjuration of felony.

Every Justice of Peace and Coroner before whom any such abjuration shall happen to be made, shall presently cause the same to be entered of Record before them, and shall certifye the same to the Justices of Assize, or next Goale delivery of the said County.

If any such offender, which is to be abjured, shall refuse to make abjuration, or after abjuration shall refuse to goe to such Haven within the time appointed; and depart the Realme, or after shall returne without licence from the Queen; that then, in every such case, the person offending shall suffer as a Felon, without benefit of the Clergy.

Every person suspected to be a Jesuite or Seminarie-Priest, who being examined by lawfull authority, and refuses to answer directly whether he be a Jesuite or not; shall be committed to prison without baile or mainprize, untill he answer directly.

Every person confined as aforesaid to the compasse of five miles, that hath necessary occasion of businesse, upon license from two Justices of the Peace in the same County, under their hands, with the assent of the Bishop of the Diocese in writing, or of the Lieutenant, or of any deputy Lieutenant of the same County, may travell about his necessary businesse, for such time only as is contained in the License.

No person so restrained as aforesaid, which shall be urged by Process without fraud or covin, and be bound to make appearance in any of her Majesties Courts, or shall be sent to by three or more of her Majesties Councell; or by foure or more Commissioners appointed by her Majesty to make appearance before her Councell or Commissioners; in every such case shall incur any forfeiture or losse for travelling or making appearance accordingly.

Every person so restrained, as aforesaid, shall be bound to yeeld their bodies to the Sherif of the County, upon Proclamation in that behalfe made, nor shall incurre any penalty for so doing.

If any person which shall offend against this Act, shall before he be thereof convicted, come to some parish Church on some Sunday, or Festiwall day, and then heare divine Service, and at Service time, or at the reading of the Gospell; make open submission and declaration of his conformity to the Queenes Lawes, as hereafter is declared; that then every such offender shall be cleerly discharged. The forme of the submission is,

*I A. B. doe humbly confesse and acknowledge, That I have grievously offended God, in contemning her Majesties godly and lawfull government and authority, by absenting my selfe from Church; and from hearing Divine Service, contrary to the godly Lawes and Statutes of this Realm; and am heartily sorry for the same; and doe acknowledge and testifie in my Conscience, That the Bishop or See of Rome hath not, or ought to have any power or authority over her Majesty; or within any of her Majesties Dominions or Realmes: And I do promise and Protest without dissimulation, or any colour or meanes of disperstation, That from henceforth I will from time to time obey and performe her Majesties Lawes and Statutes; in repairing to Church, and hearing Divine Service, and doe my utmost endeavor to maintain and defend the same.*

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The Minister or Curate of every parish where such submission shall bee made, shall presently cause the same to be entered into a booke to be kept in every Parish for that purpose, and within ten dayes after shall certifie the same to the Bishop of the Diocels.

Every offender that shall after such submission, relapse and become Recusant, in not repairing to Church to heare Divine service as aforesaid, shall lose all benefit he might have enjoyed by such submission.

Every woman married shall be bound by every article, branch and matter contained in this Act, other then the branch or article of abjuration, nor shall any woman married be compelled to make abjuration.

### Of the Reformation made by Queen Elizabeth.

The Pope did  
reject the  
Queen before  
the Queen re-  
jected the Pope

Queen Mary dying upon the 17. Novemb. 1558. the same day both Houses of Parliament without any contradiction did acknowledge and receive Elizabeth to be the true and undoubted Heir to the Crown of England, and without delay with sound of Trumpet dissolved the Parliament: for that being called by Queen Mary could have no being, or continue after her death. The Queen caused an account to be given of her assumption to the Pope (who was *Paulus Quartus*) with letters of Credence to Sir Edward Cerne, who was Ambassador to her Sister and not departed from Rome. But the Pope was so far from acknowledging her, that he answered, that that Kingdome (*viz.* of England) was held in Fee of the Apostolick See, that she could not succeed being illegitimate, that he could not contradict the Declaration of Clement the Seventh, and Paul the Third, that it was a great boldness to assume the name of Government without him; that for this she deserved not to be heard in any thing; yet being desirous to shew a fatherly affection, if she will renounce her pretensions, and refer her self wholly to his free disposition, he will doe whatsoever may be done in the honor of the Apostolick See. \* And afterwards he commanded Sir Edward Cerne, who had continued Ambassador at Rome for Henry the Eighth, Queen Mary, and then for Queen Elizabeth, to lay down his office of Ambassador (that I may use his own very words sayes the Author) by force of a Mandat made by Lively voice from the Oracle of our most Holy Lord the Pope, by virtue of holy obedience, and under pain of the greater Excommunication, and also of losse of all his goods, that he should not depart out of the City, but undertake the Government of an Hospitall of the English. \* It is true Indeed that Pius 4. (a man of much more moderate disposition then his Predecessor) did in the year 1560. by Letters, sent by Vincentius Parpalia Abbot of St. Savours to her full of humanity, not only acknowledge her Queen of England, and invited her to return into the bosome of the Church, but also (as the report went) promised to recall the sentence pronounced against her Mothers Marriages as unjust, to confirme the book of Comon-prayer in English by his authority, and to permit the use of the Sacrament in both kinds to the People of England, in case she will joyn her self to the Church of Rome, and acknowledge the Primacy of the Roman See. \* And afterwards in the year 1561. in Letters full of affection by Abbot Martinego, he invited her to the Councell of Trint, Camb. Eliz. Reg. 68. 69. but matters were so far thrust off the hinges, that not only Parpalia

Hist. cont. Trint.  
411.

Camb. Eliz. Reg.  
Pag. 28.

Camb. Eliz.  
Reg 58. 59.

lia returned without any fruit, but *Martinego* was denied access into *England*.

Not only the Arch-bishop of *York*, but all the other Bishops (except *Carlile*) did refuse to Crown the Queen, both because she had been instructed in the Protestant Religion, and because she had forbidden the Arch-bishop of *York* a little before he was to celebrate Divine service, to elevate the Host for adoration, and had suffered the Letany with the Epistles and Gospel to be used in the popular tongue. It is no wonder therefore if the Parliament which happened immediately after, and the Commons especially, who once usually swayed only by passion and affection, and much averse from the Religion of the Church of *Rome*, did endue the Queen with such plentiful power, as to make her supreme Governor (the title of Head was waved) in all causes, as well Spirituall as Temporall.

The Bishops except *Carlile* refuse to crown her.

This power the Queen well understanding, & what advantage would be made thereof by her adversaries, did by Proclamation, and after by her Injunctions declare, that she took nothing upon her more, then what anciently of right belonged to the Crown of *England*, to wit that she had supreme power and jurisdiction under God over all sorts of people within the Kingdom of *England*, whether they be Ecclesiasticall or Lay persons; and that no forrein Power hath or ought to have any jurisdiction or authority over them, *Camb. Eliz. Reg. 39. 40.*

How far the Queen did declare her Power in Ecclesiasticall matters.

In the 37. Article of the Church of *England* she declares, *We give to Our Princes that Prerogative which we see in holy Scripture alwayes given to all godly Princes by God himself, to rule all estates and degrees of men committed to their charge by God, whether they be Ecclesiasticall or Temporall, and to restrain with the sword all stubborn and evill doers.*

How far the Church of *England* declares the Prerogative of Princes.

But whatsoever the Queene or Church did declare, the Lawyers would not lose so much Grist as this Stat. of the first of *Eliz.* brought to their Mill, and therefore the fourth conclusion in the 3 part *Institutes* 43 is, That when an Act of Parliament is made concerning things meerly spirituall, as Heresie; &c. yet the Act, being part of the Lawes of the Land, the same shall be construed and interpreted by the Judges of the Common-Law, who usually confer with those that are learned in that profession, so that all Spirituall jurisdiction doth utterly vanish, whensoever the Temporall power shall doe any thing in derogation of it; and in truth ever since the Statute of the first of *Elizabeth*, all cognizance not only of Heresie, &c. but the cognizance of the worship and service of God, and administration of Sacraments, have (upon the matter) beene determined at quarter-Sessions and assizes, and since this uniting of all forraigne jurisdiction in the Crowne, many places in *England*, that were not in ordinary Episcopall jurisdiction, and immediately under the *Pope*, are become out of all cure of Soules, and for ought can be known, are not any part of any Christian Church.

The Lawyers exception of the Statute of 1 *Eliz. cap. 1.*

*If the Queen be Supreme Governor in all Spirituall cases under Christ, then are not Bishops and Priests immediately Christs Ministers, but the Queens: Nay then may she ordain, confirm, and consecrate the Sacraments, which the Church of England, Art. 37. & King James Spot. Hist. anno 7 Regni doth deny.*

The preamble of the first of *Eliz. cap. 1.* Is a supplication of the Lords Spirituall and Temporall, and Commons, that those things therein might be passed into a Law, whereas the Lords Spirituall being nine (nor were there then fourteene alive) and all who were present not only stiffly opposed

Obsecrable things in the 1. & 2. chap. 1 *Eliz. Camb. Eliz. Reg. 16.*



Pag. 36.

it, but were all of them deprived because they would not conform thereunto, and take the Oath of Supremacy made by that Act. \* In the 2. chap. 1. *Eliz.* there is a very strange clause: *viz.* The Queenes Majesty, the Lords Temporall, and Commons assembled, doe in Gods name, earnestly require and charge all Arch-Bishops and Bishops, and other Ordinaries, that they endeavor themselves to the utmost of their knowledge, that the due execution of that Law. may be had throughout their Diocesses and Charges, as they will answer before God, for such evils and Plagues, wherewith God may justly punish his people for neglecting this good and wholesome Law; and yet the Temporall powers by this very Law, have power to heare and determine all things in it as well as the Spirituall; whereas *Præces & lacrimæ sunt arma Ecclesiæ*, all alwaies the Church formerly did supplicate protection from the temporall powers.

By what degrees Religion was changed.

The Queene did not make an alteration and change in the Religion and Service of God on a suddain, but by degrees; for, for a whole moneth or more after the death of Queene *Mary*, the Roman Religion continued in the same state it did before; upon the twenty seventh of *December*, leave was granted to have the Epistles, Gospells, ten Commandments, the Lords Prayer, Creede and Litanie in the English tongue. The two and twentieth of *March*, when the Nobles and Commons were met in Parliament, the cuſtome of the Lords Supper, *viz.* in both kindes, was allowed, and the Law made to that intent in *Edward* the sixth dayes, revived and put in new force. The twenty fourth of *June* the Sacrifice of Masse was abolished, and the Liturgy in the English Tongue established by Parliament. In *July* the Oath of Supremacy was propounded to the Bishops and others, and in *Aug.* Images were removed out of Churches, and broken or burnt, *Camd. B. liii. Reg. 39.*

How the Laws made for conformity to the Service of the Church were observed.

From the first of *Eliz.* untill the eleventh yeere of her Reigne, no person of what perswasion soever, at any time refused to come to the publique Divine Service celebrated in the Church of *England*, (being so evidently grounded upon the sacred and infallible word of God, that the Bishop of *Winchester* in his answer to *Tortus*, page 42, is not afraid to affirme positively that the Pope *Paulus quartus* [which is misprinted, for it should have been *Pius quartus*] if the Queene would have acknowledged his authority, would have been so kinde as to have established all the Rites and Ceremonies now used in the Church) untill the Bull published against the Queene by *Pius* the Fifth, whereby he excommunicated her and deprived her of her Kingdome, and forbad all her Subjects, upon like penalties, to be so hardy as to obey her Admonitions, Lawes or Commandements, and did absolve all men, who had upon any occasion taken their oath to her, of all fealty and service due unto her by reason of her Government; which Bull produced no other effect then the severe Statute made the thirteenth yeere of the Queene, against all men, who should endeavor to put it or any such in ure or execution, or should receive or take any absolution or reconciliation from the Church of *Rome*. But afterward these Parliament Laws, for the conforming to Divine Service established, became as much disobeyed by another generation of men called Puritans; and therefore the Statute of the thirty fifth of *Elizabeth* cap. 1. was made expressly against them; yet would they never be restrained, untill they upon pretence of Reformation, brought a desolation upon both Church and State.

Shee

Shee was truly pious, who daily as soon as the rise, set apart some time for the worship and service of God, afterwards in her hours retired her self into her private Closet, frequented the Chappell daily upon Sundays and holydaies; nor was there ever any Prince that with greater devotion was present at divine Service: In black array, and after the manner of the former ages, she heard attentively Lenten Sermons, although she would often say what she had read of Hen. 3. her predecessor, *That she had rather devoutly pray to God in Prayer, then hear others discourse eloquently of God in their Sermons*, and of the Cross, the blessed Virgin, and of the Saints, shee thought reverently, nor did shee ever speake of them without a certain reverence, nor patiently heare others speake of them without the like, \* to these may justly be added a wisdom and prudence in Government so far above her sex, that certainly shee, in that kinde is not to be paralleld by any of her masculine predecessors: and these vertues were crowned with what felicity, that all along her long Reigne shee was most passionately and obsequiously honored by her Subjects, (a rare thing among Islanders, and not to be found in any time before her, in any of her Predecessors.) Yet sure she was rather careful to conserve peace at home then to maintain it abroad, and was more mindfull of the present age, then of posterity: and sure that King that succeeded her, might justly expect to finde a hard task to goe to Govern as to preserve the love and obedience shee had, for besides her prudence and frugality in Government and expences, she was single & had not any kindred in the Nation which were any charge to her; whereas the King succeeding, not only having a Queen, but also Posterity must multiply expence, whereby hee shall lose the affections of his Subjects, from whom it must be raised, or at least the magnificence, which is necessary for the reputation and Regality, and which every Monarch ought especially to be careful of, for, Where Majesty or Power is contemptible, the exercise of them is ever pernicious.

Of the virtues  
of Queen Eliz.

Camb. Eliz.  
Reg. 14.

### Ecclesiasticall Lawes made by King James.

**T**His Statute doth Enact, That all Statutes made by Queen Elizabeth against all Jesuites, Priests and Seminaries, made in the Church of Rome, and all those Statutes made against all manner of Recusants be put in due and exact execution.

Anno 1. Jac.  
cap. 4.

Every Recusant that shall conforme himselfe to the Lawes and Ordinances of the Church of England, and repaire to Church and continue there during the time of divine Service and Sermon, according to the true intent of the Statute in that case made in the time of Queen Elizabeth, shall be discharged from all penalties of Recusancy, so long as he continues in such obedience and conformity.

The heir of any Recusant, who is no Recusant, shall not incurr any penalty for the Recusancy of his ancestor; if at the death of any Recusant the heire of the Recusant be a Recusant, and after become conformable to the Lawes and Ordinances of the Church, and take the oath of Supremacy made in the first yee of Q. Eliz. before the Archbishop or Bishop of the Diocese, then every such heir shall be discharged of all penalty hapning in respect of the Recusancy of his Ancestor.

If



If the Heire of any Recusant bee within the age of sixteene yeeres at the death of his Ancestor, and after become, or bee a Recusant, that then hee shall not bee discharged from the penalty of Recusancy, untill hee submit to the Lawes and Ordinances of the Church, and take the said oath of Supremacy in manner and form expressed.

23 Eliz. cap. 1.

Where any seisure shall be had of the 2 parts of any Lands or Tenements, &c. for the not payment of the 20. l. due and payable for each moneth, according to the Statute in that case lately made, \* in such case two third parts shall goe to the payment of the said twenty pound a moneth, the third part shall not be extended by the King, nor forfeited by the Recusant, where any seisure hath beene made by the King, and the debt or duty by reason of Recusancy not paid, then the King may continue the seisure untill the residue of the debt be fully satisfied and discharged. The King and his Heirs shall not seize nor extend any third part descending to any such heirs, or any part thereof, either by reason of the Recusancy of such heir, or the Recusancy of his Ancestor.

Every person under the Kings obedience, which at any time (after the end of the session of that Parliament) shall send any childe, or other person under his Government, into any parts beyond the Seas, out of the Kings obedience, to be resident in any Colledge, or house of any popish Order or Profession whatsoever, or repair to the same to be instructed in the popish Religion, or in any sort to professe the same, shall for every such offence forfeit to the King the summe of one hundred pounds, and every person, so passing or sent beyond the Seas, in respect of himselfe or her selfe only, and not in respect of his or her posterity, be made incapable to inherit or purchase in any of the Kings Dominions.

If any person borne in any of the Kings Dominions, at the making of this Act, were in any such house or Colledge, to be instructed in the popish Religion, and should not return into some of his Majesties Dominions within one yeere next after the session of that Parliament, and submit himselfe as is aforesaid, shall be in respect of himselfe only, and not in respect of his heirs and posterity, utterly incapable of inheriting or purchasing within any of the Kings Dominions. Provided that if any such person shall afterward become obedient and conformable to the lawes and ordinances of the Church of *England*, and repaire to Church, according to the true intent of the said statutes and ordinances, and continue so to doe, that then every such person shall be discharged of such disability.

No woman, nor any childe under the age of twenty one yeeres (except Saylor and Ship-boyes, or the Apprentice or Factor of some Merchant in trade of Merchandize) shall be permitted to passe over the Seas (without License from the King, or six or more of the privy Councell under their hands) upon paine that the officers of the Port that willfully or negligently did suffer any such to passe, and did not enter the names of such passengers so licensed, shall forfeit their office, and all their goods and chattels and that every owner of any ship or vessell that shall willfully carry over seas any such person without license, shall forfeit his ship or vessell and all the tackle: and every Mr. or Mariner, of or in any such ship offending as aforesaid shall forfeit all their goods, and suffer imprisonment by the space of 12. moneths, without baile or mainprize.

No person shall keepe any Schoole, or be a Schoole-master, out of any of the

the Universities or Colledges of this Realme, except it bee in some publick or free Grammer-Schoole, or in some such Noblemans or Noblewomanes, Gentlemans or Gentlewomanes house, as are not Recusants, or where the said same Schoole-Master shall not be licensed by the Archbishop, Bishop, or Guardian of the Spiritualities of that Diocesse, upon paine that as well the schoole-master, as the party that entertains him, shall forfeit for every day so offending the sum of forty shillings, the one halfe to the King, the other to him who shall sue for the same, in any of the Kings Courts of Record in *Westminster*, by Action of Debt, Bill, Plaint, or Information, in which no *Esloine*, Protection or wager of Law shall be allowed.

Because some popishly affected did repaire to Church monethly, where by they did evade the penalties imposed by precedent Parliaments, as is alleged; It was therefore Enacted That if any Recusant so conformed, shall not once a yeere at least after the Session of Parliament receive the Sacrament, in the Church of that parish where he or she usually abides, or if there be no Church, then in the Church next adjoyning, shall forfeit for the first yeere the summe of twenty pounds, for the second yeere forty pounds, and for every yeere after the summe of sixtie pounds, untill hee or shee shall receive the Sacrament as aforesaid; and if he or she, who hath received the Sacrament as aforesaid, shall after offend in not receiving the Sacrament as aforesaid, by the space of one whole yeere, that then he shall forfeit for every such offence the summe of sixty pounds, the one moiety to the King, the other to him who will sue for the same in any of the Courts of Record in *Westminster*; or before any Iustices of Assize, or before Iustices of Peace at their generall Quarter-Sessions, by Action of Debt, Bill, Plaint, or Information, wherein no *Esloine*, Protection or Wager of Law shall be allowed.

Stat. Anno. 3.  
Jac. cap. 4.

The Churchwardens and Constables of every Towne, Parish or Chappel for the time being, or some one of them, or if there be none, then the chief Constables of the Hundred where such Town, Parish or Chappell is, or one of them, as well in places exempt as not exempt, shall once every yeere, present the monthly absence from Church of all popish Recusants, within such Townes and parishes, and shall present the names of every of the children of the said Recusants, being above the age of nine yeeres, and (as neere as they can) the age of the said children, as also the names of the Servants of the said Recusants, at the next generall or quarter-Sessions of that shire, limit, division or liberty.

All such Presentments shall bee Recorded in the said Sessions, by the Clerke of the Peace, or Towne-clerke for the time being, without any Fee; and for default of every, such Presentment, the said Churchwardens, Constables, or High-constables shall forfeit twenty shillings, and for default of recording such presentment without a Fee, the Clerke of the Peace, or Town-clerke shall forfeit 40. s.

Every Prafenement made by any Churchwarden, constable or High-constable as aforesaid, whereby any Recusant shall happen to be convicted, shall be rewarded by having 40. s. to be levied out of such Recusants goods and estate, in such manner as by the more part of the Iustices shall be ordered by warrant under their hands and seales.

The Iustices of Assize, and Iustices of Quarter-sessions have power to heare and determine of all Recusants, as well for not receiving the Sacrament



as for not coming to Church; and have also power to make Proclamation; that the body of every such offender shall be rendred to the Sheriff of the county, or the Baylif or keeper of the Goale of the liberty; before the next Assizes, Generall or Quarter-sessions; and if then the offender shall not make his appearance upon Record, that every such default shall be deemed as a sufficient conviction by verdict of 12 men.

This Statute recites the penalties imposed by the 29 *Eliz.* 6. upon a Recusant convict, and that every conviction shall be certified into the Exchequer, as is in the statute of 23 *El.* 1. concerning Recusants monethly forfeitures; yet by this statute the King may refuse the 20 l. a moneth, and take the 2 parts of the Recusants lands, yet the King shall not take into his two parts the Mansion house, nor shall demise, nor lease over the 2 third parts, or any part thereof to any Recusant, nor to the use of any Recusant: and whosoever shall take any lease of the King, of such lands, shall give such security as the Court of Exchequer shall allow, not to suffer any waste to be committed upon the Premisses.

For the better tryall how the Kings subjects stand affected in point of loyalty and due Obedience, it is Enacted, That after the end of the session of Parliament, any Bishop of the Diocese, or any two Justices of peace, whereof one of the *Quorum*, within the jurisdiction of their sessions, may require any person of the age of 18 yeeres or above, being or which shall bee convict or indicted for any Recusancy (except noblemen and noble women) for not repairing to Divine service according to law, or have not received the Sacrament twice within the yeere next past, or any person passing through the County or Liberty and unknowne, (except as is before excepted) that being examined by them upon oath shall confesse or not deny himself to be a Recusant, or shall confesse or not deny that he hath not taken the Sacrament twice within the yeere to take this Oath hereafter upon the holy Evangelists, which said Bishop or two Justices shall certifie in writing subscribed with his or their hands, at the next generall or Quarter-sessions, the Christian name, Sirname and place of abode of every person which shall take the said Oath; which Certificate shall be there Recorded and kept among Records of the said sessions.

If any person (other then noblemen and noble women) shall refuse to answer upon Oath to such Bishop or Justices of Peace, or take the said Oath duely tendred, then the said Bishops or Justices of Peace shall commit the same person to the common Goale without Baile or Mainprize, untill the next Assizes or quarter Sessions, where the said Oath shall be againe tendred unto them by the Justices of Assize or Justices of Peace, or the greater part of them; and if such person shall then refuse to take the Oath, he shall incur the penalty of a *præmunire*, except women Covert, who upon refusall shall only be committed to the common Goale there to remain without bail or mainprize, untill they take the said Oath.

#### The Tenour of the Oath.

**I** A. B, Doe truly and sincerely acknowledg, professe, testify and declare in my Conscience before God and the World, that our Sovereign Lord King James is lawfull and rightfull King of this Realm, and of all other his Majesties Dominions and Countries, and that the Pope neither of himselfe, nor by any Authority  
of

of the Church or See of Rome, or by any other meanes with any other, hath any power or authority to depose the King, or to dispose of any of his Majesties Kingdomes or Dominions, or to authorize any forreigne Prince to invade or annoy him or his Countries, or to discharge any of his Subjects of their Allegiance and Obedience to his Majesty, or to give licence or leave to any of them to beare Arms or raise tumults, or to offer any violence or hurt to his Majesties Royall Person, State or Government, or to any of his Majesties Subjects within his Majesties Dominions.

Also, I sweare from my heart, that notwithstanding any Declaration or Sentence of Excommunication or Deprivation made or granted, or to be made or granted by the Pope or his Successors, or by any authority derived, or pretended to be derived from him or his See against the said King, his Heires and Successors, or any absolution of the said Subjects from their obedience: I will beare faith and true Allegiance to his Majesty, his Heirs and Successors, and him and them will defend to the uttermost of my power, against all conspiracies and attempts whatsoever, which shall be made against his or their Persons, their Crowne and Dignity, by reason or colour of any such Declaration or Sentence, or otherwise, and will doe my endeavor to disclose and make known unto his Majesty his Heirs and Successors, all Treasons and Traitous Conspiracies, which I shall know or heare of, to be against him or any of them.

I doe farther sweare, That I doe from my heart abhorre, detest and abjure as impious and Hereticall, this damnable Doctrine and Position, That Princes which be excommunicated or deprived by the Pope, may be deposed or murdered by their Subjects or any other whatsoever.

And I doe beleieve, and in my Conscience am resolved, That neither the Pope nor any person whatsoever, hath power to absolve me of this Oath, or any part thereof, which I acknowledge by good and full authority to be lawfully ministred unto me, and doe renounce all Pardons and Dispensations to the contrary. And all these things I doe plainly and sincerely acknowledge and sweare, according to these expresse words by mee spoken, and according to the plaine and common sense and understanding of the same Words, without any Equivocation or mentall Evasion, or secret reservation whatsoever, And I doe make this Recognition and acknowledgment heartily, willingly and truly, upon the Faith of a Christian.

So helpe me God.

Unto which Oath, so taken, the said Person shall subscribe his or her name or marke.

No Indictment to be had or found for not repairing to Church, or for not receiving the Sacrament according to Law, nor any Proclamation, Outlawry or other proceeding thereupon shall be avoyded, discharged, reversed for default of forme (other then by direct Travers to the point of not coming to Church, or not receiving the said Sacrament.)

If any Person so Indicted, afterward submit and conform himselfe, and become obedient to the Lawes of the Church of England, and heare Divine Service according to the Statute in that case made, and publicly receive the Sacrament, according to the Lawes of this Realm, that then every such person may reverse and discharge the said Indictment.

Every subject of this Realme, that shall passe out of this Realme, and voluntarily serve any forreign Prince, State or Potentate, not having taken this Oath, as aforesaid, shall be a felon.

If any Gentleman, or person of higher degree, or any person or persons

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which hath born, or shall bear any office of Captain, Lieutenant or any other Office in Camp, Army or Company of Souldiers, shall after voluntarily serve any foreign Prince, State, or Potentate, before he shall become bound by obligation, with two such sureties as shall be allowed by the Officers, which by this Act are limited to take such bond unto the King in the summe of 20 l. at least, with condition to the effect following, shall be a Felon.

*The Tenor of the Condition followeth, viz.*

That if the within bounden, &c. shall not at any time then after be reconciled to the Pope or Sea of *Rome*, nor shall enter into, or consent unto any practice, plot, or conspiracy whatsoever against the Kings Majestie, his Heirs and Successors, or any of his or their Estate or Estates, Realms, or Dominions: but shall within convenient time after knowledge thereof had, reveal & disclose to the Kings Majesty, his Heirs and Successors, or some of the Lords of his or their honorable Privie Councell, all such practices, plots and conspiracies; That then this obligation to be void.

The Customer and Controller of every Port, Haven, or Creek, or one of them and their Deputies, and none other, may receive such Bond to the uses aforesaid, and minister the Oath aforesaid (taking for such bond six pence and no more, and for such oath nothing) which said Customer and Controller shall Register and certifie such Bond and Oath so taken, into the Exchequer at *Westminster* once every year, upon penalty of 5 l. for every Bond not so certified, and 20 s. for every Oath not so certified.

If any person put in practice to absolve or persuade any of the Kings Subjects from their naturall obedience to his Majesty, either within or without the Dominions, or upon the Sea, &c. or to reconcile them to the Pope or Sea of *Rome*, or any other Prince, State or Potentate, that then every such person, their Aiders, Counsellors and Abettors shall be adjudged Traitors; and every person which shall willingly be absolved or reconciled as aforesaid, shall be adjudged a Traitor.

The last branch shall not extend to any person which shall be only reconciled to the Pope or See of *Rome*, and shall return into this Realm, and within six dayes after, before the Bishop of the Diocess, or two Justices of Peace joyntly or severally, submit himself to his Majesties Lawes, and take the Oath of Supremacy made in the first year of the Queen, \* and also the Oath mentioned in this Statute. Where Oathes are so taken the Bishop and Justices shall at the next Generall or Quarter-sessions certifie, upon the penalty of fourty pound.

All persons who offend against this branch of the Statute shall be indicted and tried by the Justices of Assize and Goal-delivery of that County for the time being, or before the Justices of the Kings Bench, and there be proceeded against according to the Laws, against Traitors, as if the offence had been committed in the same County.

If any Peer of the Realm shall happen to be indicted of any offence made Treason by this Act, he shall be tried by his Peers.

If any person shall not resort weekly to some usuall place of Divine Service, any Justice of Peace in the Limit, Division or Liberty, where such person shall dwell, may give a Warrant to the Churchwarden of the Parish, upon proof or confession made before him, to levy twelve pence for every such

such default, by distresse, and sale of the Goods of the offender; and for default of such distresse the said Justice may commit the offender to prison until payment be made.

No man shall be impeached upon this clause, except it be within one moneth after such default made.

No man being punished according to this branch, shall for the same offence be punished by forfeiture of twelve pence, upon the Law made in the first year of Queen Eliz.

This Statute repeals the two branches of 35 Eliz. 1. the first beginning, [and for that every person having house or family, is in bounden duty to have speciall regard of the Goal governance and ordering of the same] and so forth to the next clause, beginning thus [provided neverthelesse that this Act shall not in any wise extend to punish or impeach any persons for relieving, &c.] ending with these words [any thing in this Act contained to the contrary notwithstanding.]

In lieu whereof every person which shall willingly maintain, relieve, or keep in his house any servant, sojourner or stranger, which shall not repair to some usuall place of Divine service according to Law, by the space of one moneth, not having a reasonable excuse, shall forfeit ten shillings for every such moneth.

Every person which shall retain in service, fee, or livery any person, which shall forbear to goe to some usuall place of Divine service by the space of a moneth, shall forfeit for every such moneth, he knowing the same, the summe of ten pounds.

This Act shall not extend to punish any person for maintaining, relieving or harbouring his Father or Mother, wanting without fraud any other habitation, or sufficient maintenance, or the ward of any person committed by authority to the custody of any by whom they shall be so relieved, maintained or kept.

The Sheriff, or other Officer upon lawfull Writ, Warrant or Proccesse to him awarded to take or apprehend any Popish Recusant, standing excommunicated for recusancy, may break open the house where any such person excommunicated shall be, or raise the power of the County for apprehending such person.

Every offence committed against this Act may be heard and determined before the Justices of the Kings Bench, and Justices of Assize: And all offences other than Treason shall be enquired, heard and determined before the Justices of Peace in their next Generall and Quarter-sessions.

No attainder of Felony by this Act shall extend to forfeiture of Dower or corruption of blood.

The Defendant in any action commenced or brought against him by virtue of any thing in this Act, may plead to the generall Issue, by an Evidence that shall prove his doings or proceedings warrantable by this Law.

This Act nor any thing contained therein is said not to extend to take away or abridge any authority or jurisdiction of Ecclesiasticall censures.

No person shall be charged in any penalty by force of this Act, which shall happen for the wifes offence in not receiving the Sacrament during her Marriage, nor any woman shall be charged with any penalty for not receiving during Marriage.

In all cases where the Bishop or Justices of Peace by virtue of this Act



may take of any Subject (not a Nobleman) this oath above mentioned. The Lords of the Privie Councell; or any 6. of them, whereof the Lord Chancellor, Lord Treasurer, or principle Secretary to be one, have authority to require the same at any time of any Noble-man or Noble-woman (being above the age of 18. years) and if such Noble-man or Noble-woman (other then the woman married) refuse the same, they shall incur the penalty of a *Præmunire*.

Where any person shall pass out of the Cinque-Ports; or any member thereof, to any parts beyond the seas, to serve any foreign Prince, State, or Potentate, the Lord Warden of the Cinque-Ports for the time being, or any person by him appointed, have power to take bond, and minister this oath to such passengers.

Stat. Ann. 3  
Jac. cap. 5.

If any man discover any Recusant or other person which shall entertain or relieve any Jesuit, Seminary or Popish Priest, or shall discover any Mass to have been said, and the persons which were present, and the Priest, or any that were present within three daies, shall not only be freed from any penalty, but shall have the third part of the forfeiture of all such summes of money, goods and chattels, which shall be forfeited for such offence, (if the forfeiture exceed not 150 l. if it doth exceed 150 l. then the discoverer to have 50 l.) and the discoverer after conviction of the offender, shall have a certificate from the Judges or Justices of Peace before whom such conviction shall happen to be, directed to the Sheriffe, or other Officer that shall seize the goods, commanding him to pay the same accordingly.

No Popish Recusant shall come into the house where the King, or the Heir apparent shall be, unlesse commanded by the King, or by Warrant from the Lords of the privy Councell, upon penalty of one hundred pound, the one moiety to the King, the other to the discoverer, who will sue for the same in any Court of Record; where no *Essoine*, Protection or Law Gager shall be allowed.

All convicted Popish Recusants dwelling in *London*, or within five miles within three moneths after the Session of Parliament, shall depart out of it, and not dwell within ten miles, and deliver up their names to the Lord Mayor if they dwell in *London*; and if such Recusant shall dwell within ten miles of *London*, to deliver up his name to the next Justice of Peace within forty dayes after the Session of Parliament, upon the penalty of one hundred pounds, the one halfe to the King, the other to him who will sue as aforesaid.

All Recusants which shall dwell or remain in *London*, or within ten miles thereof, shall within ten dayes after indictment or conviction depart out of the said compass, and deliver up their names to the Lord Mayor. In case the said Recusant shall dwell in any County within ten miles of *London*, then within ten daies after conviction or indictment, shall give up his name to the next Justice of peace, the person offending shall forfeit one hundred pounds, the one halfe to the King, the other to the Informer as aforesaid.

Tradesmen Recusants who have no other habitation, may continue within *London*, and the compass of ten miles.

This Act repeals that branch of the 35 *Elix. cap. 2.* touching licence of Recusants to remove or pass above five miles from their place of abode.

The King or three or more of the Privy Councell under their hands, may licence a Recusant to travell out of the compass of five miles. So may

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four Justices of Peace of the County, with the privity of the Bishop of the Diocese in writing, or of the Lieutenant, or any of the Deputy Lieutenants, the party taking his corporall oath that he truly informes them of the cause of his journey, and making no causeless stayes.

No convict Recusant shall practise the Common Law as a Counsellor, Clerk, Attorney or Solicitor; nor shall practise the Civill Law as Advocate or Proctor; nor practise Physick, nor be an Apothecary, nor shall be Judge, Minister, Clerk or Steward of any Court; nor keep any Court, nor shall be Register or Town-clerk, or other Minister or Officer in any Court, nor shall bear Office, as Captain, Lieutenant, Corporall, Sergeant, Auntyent-bearer, or other Office in Camp, Troop, Band or Company of Soldiers; nor bear any office in any Ship, Castle or Fortresse of the Kings, upon penalty of one hundred pounds to be forfeited as aforesaid.

No popish Recusant convict, or having a Wife convict, shall bear any publick office in the Common-wealth.

Every married woman being a Recusant convict (her husband not being convict) shall forfeit a third parts of her Joynture and Dower during her life, and be made incapable of being Executrix, or Administratrix to her husband.

Every Popish Recusant convict shall be deemed as a person excommunicated so long as he continues not conformable, and not come to Divine service, and receive the Sacrament, and take the oath appointed by this Parliament in the first chap.

Yet such Recusant may sue for such of his Lands, Tenements, &c. and for the profits thereof, which are not seized into the Kings hands for his Recusancy or any part thereof.

Every convicted Popish Recusant not married in some open Church or Chappel, or otherwise then according to the Church of England, by a Minister lawfully authorized, shall be disabled to have any estate of Freehold by Curtesie of England. And every woman being a popish Recusant convict, which shall be married in other form then as aforesaid, shall be disabled not only to claim any Dower or Joynture, but also the Widowes Estate and Frankmarke in any customary Lands whereof her Husband died seized, and likewise from having part of her husbands goods by virtue of any custom of any County, City, or Place. And if a man be married contrary to the true intent of this Statute to a woman who hath no Lands or Tenements whereby he may become Tenant by Curtesie, he shall forfeit ~~100 l.~~ to be paid as aforesaid.

Every Popish Recusant, which shall have a child born, and shall not within a moneth after cause it to be baptized by a lawfull Minister, according to the Lawes of the Realm in some usual place of Baptisme: or if by infirmity the child cannot be brought to such place, then to be baptized by some Minister within the moneth, if he be living by the space of a moneth, or if he be dead, then the Mother of such Child shall for every such offence forfeit one hundred pound, one third part to the King, the other to the Informer who will sue for it, the other third part to the poor of the said Parish, to be recovered in any of the Kings Courts, wherein no Effoigne, &c. shall be allowed.

If any Popish Recusant not being excommunicated shall be buried in any place other then the Church or Church-yard, or not according to the Ecclesiasticall



ecclesiasticall Lawes of the Realm: That the Executors or Administrators of every such person so buried, knowing the same, or the party that so burieth him shall forfeit twenty pounds to be paid as aforesaid.

If the children of any of the Subjects within this Realm (the said children not being Souldiers, Mariners, Merchants, or their Apprentices or Factors) shall be sent, or goe beyond seas without licence of the King, or six of the Privy Councell (whereof the principall Secretary to be one) under their hands and seals, that every such child shall take no benefit by any gift, conveyance, descent, devise or otherwise, untill he being above the age of eighteen years take the oath mentioned in an Act made that Session, intituled *An Act for the better discovery and repressing Popish Recusants, &c.* before some Justice of Peace of the County where such Parents of such Children as shall be sent, did or shall inhabit: In the mean time the next of kin, who is no popish Recusant, shall enjoy all the said Lands, &c. untill the person so sent shal conforme himself and take the said oath, & receive the Sacrament of the Lords Supper; and then he who hath received any profit as aforesaid, shall restore the goods or value to him, who shall so conform himself: He that shall so send his child beyond seas, shall forfeit one hundred pounds to be recovered as aforesaid.

No convict popish Recusant shall present to a Benefice with Cure, Prebend, or grant an Advowson, or collate or nominate to any Free-school, or Donative whatsoever.

The Chancellor and Scholars of the University of *Oxford*, when any such become void, shall have the nomination, presentation, collation and Donation of any such Benefice, Prebend, or Ecclesiasticall Living, School, Hospitall and Donative, in the Counties of *Oxford, Kent, Middlesex, Suffessex, Surrey, Hampshire, Barkshire, Buckinghamshire, Gloucestershire, Worcestershire, Staffordshire, Warwickshire, Wiltshire, Somersetshire, Devonshire, Cornwall, Dorsetshire, Herefordshire, Northamptonshire, Pembrokeshire, Carmarthenshire, Brecknock-shire, Monmouthshire, Cardiganshire, Montgomeryshire*, and the City of *London*, so long as the Patron shall remain a Recusant convict.

The Chancellor & Scholars of the University of *Cambridge* shall have presentation, &c. to all such Benefices aforesaid being in the Counties of *Essex, Hertfordshire, Bedfordshire, Cambridgeshire, Huntingdonshire, Suffolk, Northfolk, Lincolnshire, Rutlandshire, Leicestershire, Derbyshire, Nottinghamshire, Shropshire, Cheshire, Lancashire, Yorkshire, the County of Durham, Northumberland, Cumberland, Westmorland, Radnorshire, Denbysire, Flintshire, Carnarvonshire, Angleseyshire, Merionethshire, Glamorganshire*, so long as the Patron shall continue a Recusant convict.

Quere who shall have the next presentation & nomination.

If the Chancellor and Shollars of either University shall nominate or present to any such Benefice, &c. any person who hath any other Benefice with cure of souls, every such nomination and presentation shall be void.

A convicted Recusant shall neither be Executor, or Administrator, nor Gaurdian in Chivalry or Socage.

The next of kin of the children of Recusants convict, to whom the Estate cannot descend, who shall usually resort to Divine Service according to the Lawes, and receive the Sacrament, shall have the Guard and education of the children, and of the Lands and Tenemeuts holden in Knights-service, untill the full age of 21 years; and of the Lands in Socage, as Guardian in Socage;

Socage; and of Customary Lands by copy of Court Roll; so long as the custome shall permit the same, and in every of the said places shall yeeld an account of the profits to the Ward.

All Grants of Wards either of the King or any other, to any Popish Recusant shall be void.

No person shall bring from beyond Sea, print, sell, or buy any Popish Primers, Ladies Psalters, Manuels, Rosaries, popish Catechisms, Missals, Breviaries, Portals, Legends and lives of Saints, containing superstitious matter, upon penalty of fourty shillings to be forfeited as aforesaid, viz. one third part to the King, an other to the Informer who will sue, the other to the poor of the Parish where such book shall be found.

Justices of peace in their Limits, Mayors, Bayliffs & chief Officers in Corporations, may search the house of every popish Recusant convict, & the house and lodging of every person whose wife is a popish Recusant convict, for popish books, and Relicks of Popery. And if any Altar, Pix, Beads, Pictures, or such like popish Reliques, or any popish books shall be found, as in the opinion of such Officers shall be thought unmeet for such Recusants, they shall presently be defaced and burnt, if meet to be burnt.

All Armour, Gunpowder and Munition whatsoever any popish Recusant convict hath or shall have, in his own house, or in the hands of others, shall be taken from them by warrant of four Justices of peace at their Generall or Quarter-sessions (other then such necessary weapons as the four Justices shall think meet for defence of the said Recusants in defence of their houses) and the said Armour and Munition so taken shall be kept at the costs of the said Recusants, in such places as the four Justices shall appoint.

If any such Recusant which hath such armour, &c. or any person who hath any such armour, &c. for the use of such Recusant, shall refuse to declare unto the said Justices of peace or any of them, or shall hinder or disturb any such Justices, or any person authorised by them to seize the same, shall forfeit all such armour and ammunition to the King, and be imprisoned by warrant from any of the Justices of the County, during the space of three moneths, without bayl or mainprize.

This Act, nor any thing therein shall not abridge the authority and jurisdiction of Ecclesiasticall censures.

See Statute 6 anno 7 *Jacobi*, who shall take the oath of obedience to the King, and by whom it shall be ministred, and within what time.

If any married woman, being lawfully convict as a popish Recusant, for not coming to Church, shall not within three moneths after such conviction conform her self, and repair to Church and receive the Sacrament according to Law, then shall shee be committed to prison by one of the Kings Privy Councell, if she be a Baroness; or if she be under that degree, by two of the Justices of the peace of the County, whereof one of the *Quorum*, without Bail or Mainprize, untill she conform her self to come to Church, and receive the Sacrament, unlesse the Husband shall pay to the King ten pounds a moneth, or the third part of his Lands and Tenements, so long as the Wifere remaining out of prison shall continue a convicted Recusant, during which time (and no longer) she shall have her liberty.

If the giving of the temporall powers cognizance of crimes meerly spiri- Annot.  
tuall be objected to *Edw. 6. Queen Elizabeth* and *King James*. I think no  
man will undertake to answer for all things done by men; yet thus much  
may



may be answered that it was no new thing, for the Statute of 2 H. 5. cap. 7. gives Justices of peace and Justices of assise full power and authority to enquire of these, who hold Errors, Herefies and Lollardy, and of their maintainers; and that the Sheriff and other Officers may arrest and apprehend them: and that this was done by Queen Mary. See Mary.

Anno 1. Seff. 2.  
cap. 2.

Of King James:

King James his  
Title and Re-  
ception.

AS there was never any Prince who had a more clear and undoubted right and title to the English Diadem then King James (for besides that he was Heir to both Houses of York and Lancaster, as is most truly acknowledged by both Houses of Parliament Anno 1. cap. 1. Fac.) he was derived by a long descent of Royall Ancestors from Malcolm Conmor or Cammore King of the Scots, and the Lady Margaret (being the name of her from whom the united Title of both Houses of York and Lancaster descended upon him) Sister and sole Heir of Edgar Atheling, Son and Heir of Edward, eldest son of Edmond surnamed Ironside; so that all titles as well of right of blood, as of conquest, might so truly be ultimately resolved into him, that in the whole world no just exception could be taken against them: so never was any Prince received with so little opposition and contradiction, by all sorts of his Subjects both in England and Ireland; where all those long rebellions and commotions, did expire with Queen Elizabeth; and in both Kingdomes all became so pacate and calme, that during all his Reign in neither Nation was any sword drawn in opposition to him.

His care of the  
Church.

There was such havock made in the Reign of H. 8. & Ed. 6. of all Church Lands, upon pretence (forsooth) of Reformation, that to stay it there was a Law made in the first of Queen Eliz. cap. 19. that all Gifts, Grants, Feoffments, Fines and other Conveyances, made by any Arch-bishop or Bishop of any Honours, Castles, Manors, Lands, Tenements, or other Hereditaments, being parcell of the possession of his Arch-bishoprick, or Bishoprick, or united, or appertaining or belonging to any of the same, to any person (other then the Queen her Heirs and Successors) whereby any Estate should or might pass from the Arch-bishop, or Bishop other then for the term of 21 years, or three lives, reserving the old Rent or more, shall be utterly void. Camden Eliz. Reg. pag. 36. takes notice of the great abuse made by the Courtiers of that clause, or exception of the Queen, &c. And indeed William of Burley had by the Queens permission so gelt the Bishoprick of Ely by virtue of this clause, that it lay void above twenty years before any man of abilities or honesty would take it so pol'd and maimed, although some were conunitted to prison for refusing of it. But King James as his first and chiefest care by an Act of Parliament in the first year of his Reign cap. 3. made a Law that all assurances afterward made to the King of any of the Lands of Arch-Bishops or Bishops should be void; so that the rapine and prey made upon the Church was first restrained totally by him.

His care of Re-  
ligion.

King James was not only a devout observor of the Government, Rites and Ceremonies of the Church of England, but made it one of his chiefest cares to have brought an Uniformity as well in Scotland as in England; and proceeded so far as to settle Episcopacy among them, naming thirteen new Bishops for so many Episcopall Sees as had been anciently in that Church; three of which received consecration from the Bishops of England, and conferred

ferred it on the rest of their Brethren at their coming home : Which Bishops he armed also with the power of an High Commission, the better to keep down the insolent and domineering spirit of the Presbyterians. In order to the other, he procured an Act to be passed in the Assembly at *Aberdeen* 1616. for composing a Liturgy, and extracting a new book of Canons out of the scattered Acts of their old Assemblies. At the Assembly held at *Perth* anno 1618. he obtained an Order for the receiving the Communion kneeling, for the administering Baptisme, and the Lords Supper in private houses in cases of extreme necessity, for Episcopall confirmation; and finally for the celebrating the Anniversaries of our Saviours birth, his Passion, Resurrection and Ascension, and the coming down of the Holy Ghost : all which he got confirmed in the following Parliament. So far did this wise King advance the work of Uniformity before his engaging in the cause of the *Palatinate*; his breach with *Spain*, and the warre which issued thereupon did divert his thoughts.

To his peacefull disposition, and his care of the Church and Religion, in the next place may be truly added his great abilities in learning, so far transcending, not only the Kings of the present age his contemporaries, but all his predecessors, and surely scarcely to be paralleled by any of his time, as his many learned works testifie. To these other virtues may be added a mind no wayes vindicative, although sometimes transported with present passion; yet of some small continuance that in person or estate he was never noted to punish any man rashly, or extrajudicially. And although he was no great lover of the Commons Lawes of this Land, yet a great assessor of them, and in disgrace with him, would oftentimes affirm, that there was no time when-ever he could speak reason, but the King would hear him. With the reputation of these virtues he governed these Islands in greater peace, then possibly, in the ordinary nature of things, could be expected.

His great learning and clemency.

In the 3. year of his Reign, viz. *Anno Dom.* 1605. was a most hainous and vile attempt, intended not only against the very Person of the King, but even of his Posterity, which had not advanced the designe of the conspirators, and the Church, and all the Nobility, (not of their faction) with the Commons in Parliament assembled. And the conspirators had proceeded so far, that they had not only made provision to have effected their purpose, and intended the fifth of *November* (being the day for the convention of the Parliament after their Prorogement, and therefore probably expecting not only a more then usuall convention both of the Lords and Gentry, but even of the King himself) to have blown up the Parliament House, But the designe being as foolish as desperate, was discovered the night before it should have been executed (although it is thought, that it was known even to the King himself, and the Earl of *Salisbury* before) as by accident; and so had no other effect, then what the conspirators might reasonably have expected, had it succeeded, viz. ruine to themselves (for their faction being so very few in proportion to the rest of the Nation, and without either money, Forts, or Army, in reason they could not have done any thing considerable in order to their further designes) and severe Lawes against all which might be suspected to be of their faction, to prevent any such further attempts.

The cause of the many laws made against Popish Recusants.

It is true where *Tacitus* observes, that the conspiracies of Subjects where they succeed not, doe advance the Sovereignty, and verified in this attempt of the Gunpowder-Treason : for how many Lawes were that Parliament,

His defects and frailties.

T t

and



and afterward enacted against all Popish Reculants, we have before shewed; yet so it happened (and so usually happens, when not carefully minded by Princes) that another faction, far more formidable both to King and Church, openly pretending assistance to the King and Church in persecuting this faction, secretly acquired strength to themselves in so doing. Nor was this unseen by this wise King, (being naturally a greater enemy to the Faction persecuting the persecuted) but either not having that magnanimity, which is so requisite in a Sovereign, or apprehending he had not means sufficient to goe through, he neglected to apply such medicines, as were necessary to the curing of this Gangrene so dilating it self both in Church, Court and State; but desiring Peace, (especially at home) although almost upon any termes, he rather sought to repell the breaking out of Puritanisme during his Reign, then to eradicate it for the future. Add hereunto that being excessively addicted to Hunting; and not greatly loving the Common Lawes, and finding it impossible to govern this Nation otherwise; and minding controversies in Divinity more than the management of his temporall affaires: and though free from Sacriledge and Corruption in his person, yet carelesse of it in his Favourites and Countrymen: and nothing so prudent a Manager of the Revenues of the Crown as his Predecessor, whereby being forced to recede from many of his Regalities, the Reins of Government both in Church and State, became so loose that (in the ordinary nature of things) it was very difficult they should be reassumed by his Successor.

*Ecclesiasticall Lawes made by King Charles.*

**T** Here were some few Lawes made against Interludes, &c. on the Lords day, and 10. groats penalty for offence, to be levied by Justices and Constables, which a man may read in the first *Car. 1. & 3 Car. 1.*

The State of  
the Church &  
State in the be-  
ginning of K.  
Charles his  
Reign.

There had never in any time been before this Kings Reign so long Peace (*viz.* for neer 80 years) in this Nation as in the beginning of his Reign; but neither doth peace make mens minds peaceable, nor were things otherwise well disposed for the continuance of it: for not only the zealous and obsequious duty which the Subjects paid to the Royall name in the person of Queen *Elizabeth* was quite dead, and almost forgotten; the great wisdom and learning of his Father not to be hoped for in the tender years of the Son; the Exchequer without money; and yet the King engaged in a Warre against the Spaniard for recovery of the *Palatinate*: but the Puritan Faction (which Queen *Elizabeth* desired so much to suppress, and so much hated by his Father) was grown so farre up in Church, State and Court, that in all they were far more numerous both in *England* and *Scotland*, and all forein Plantations, then all his other Subjects. Nor was the condition of *Ireland* better, for not only the Protestant party were jarring among themselves, but the Popish intent upon their destruction, which after they did execute in a terrible manner. To these may be added the government both in Church and State so neglected, that the exercise of any Lawes to reduce them to conformity, would be imputed to have been Innovations and Tyranny. The Kings Councell either uncapable of giving counsell, or not faithfull to their Prince. Nor was there any thing left to oppose all these growing calamities, but the hopefull virtues of a young Prince (unacquainted in Tempo-

ral

rall affaires, and a stranger to all worldly calamities) which are of no more power to protect him against seditious and rebellious Subjects, then the Lawes of God, and all which may be called sacred, will retain men in obedience, where they are not restrained by a present coercive power. But these stormes (which after brought this Saintlike Prince, and this wofull Church & State to so lamentable a condition as they lately lay under) did not breake out in the very beginning of his Reigne, but in all three Nations did gather into such black clouds in all his reigne, that almost at once breaking forth in such a terrible Tempest, as, upon the matter, it so overwhelmed King, Church and Government, that there was scarce any footsteps of them left.

I had here designed to have inserted a short History of the chiefe occurrences of his Reigne, and by what degrees this saint-like Prince became a victim to the rage and lust of his seditious subjects, and have the papers now by me; but in regard it must needs rub soares, which may rather in their tendernesse anger then ease them, and also because the History of his life hath been by others more fully written, but most of all, because it is his Majesties pleasure to have the memory of things rather buried in oblivion then renewed, I shall forbear, and doe no more then give the description of him, and shew the consequence of his calamities.

### *The Description of King CHARLES.*

**T**T is a thing very worthy of great consideration, To thinke how the singular virtues and eminent qualities of so good and pious a Prince should come to so cruell, so unfortunate an end; for in him was all those amiable qualities, which in another age would have rendred him revered and admired: So singular Piety, *That the Portraiture of King CHARLES in his sufferings*, will be a Character of it beyond all expresseion but his own; so ardent a zeale in Religion, that not any Regular in Religion was a more devout observer of his Order, then the King was of the Rites and Liturgy of the Church; So free from Simony that the suspicion of it in any man, (how deserving soever otherwise) was sufficient bar from any advancement in the Church; So just, that though he every day saw the Puritan-faction budding out more formidably, both in Church or State, yet did he never proceede illegally or in an extrajudiciall manner against any man, before the stormes of his Adversaries broke out upon him on every side; So mercifull, that the Scottish Lord *Balmerino An. 1634.* being legally convict of Treason, was pardoned by him; Nor was *Londen* proceeded against for holding correspondence with the King of *France*, without the Kings privy, and giving him the Title of *Du Roy*: nor in all his Reigne (how formidable soever the faction grew) did he, before the war brake out against him, put any to death, except one in the *Lambeth* conspiracy, for fomenting and contriving the conspiracy against him: To these may be added a profound Judgement in the affaires both of Church & State, how much it appeared in the former, appears in the entercourse between him and Master *Hinderson*; nor was his Pietie to his Parents lesse conspicuous, being truly the principall Mourner at his Mothers funerall, and chose rather to expresse the Pietie hee owed to his Father, in attending his dead body to his grave, although contrary to the custome of his predecessors, then to insist upon nicities of State; So sin-



gular was his conjugall love and chastity to his Queene, that a little before his death he commanded the Princesse *Elizabeth*, his daughter, to tell her Mother, that his thoughts had never strayed from her, and that his love should be the same to the last: Jealous he was of the honour of the English Church and Nation, and well understanding that where mens mindes are not well knit in Religion, nothing will long keep their affections cemented: He had a great desire to have finished King *James* his designe of uniting the Kirk of *Scotland* in an Uniformity with the Church of *England*, who had made some progresse in an Assembly held at *Aberdeen* 1616. and afterward in another at *Perth* 1618, which King *Charles* got passed in Parliament of *Scotland* 1633. In him was a perpetuall love to the good, and an infinite desire of doing good to all.

These noble vertues and graces towards God, his Parents, Wife and Subjects, were adorned with most eminent and singular personall vertues, and graces, as moderation in prosperity, magnanimity in adversity; so wonderful patience, that after the fight of *Croft* bridge, in his march after the Earl of *Essex*, it chanced that one of his Carriages brake in a narrow long Lane, where his Majesty was to passe, and gave a stop to him at a time when a great showre of rain happened to fall: some of them who were neer about him offered to hew out a way through the hedges with their swords, that he might get some shelter in the Villages adjoyning; but he resolved not to forsake the Canon upon any occasion; at which some seeming to admire his patience, his Majesty lifting up his hat, said, *That as God had given him afflictions to exercise his patience, so he had given him patience to bear his afflictions.* So severe an observer of his words and actions, that he was never observed to say any thing lightly or rashly, or in his personall actions did any thing which might render his person or authority contemptible: So temperate, that in all his life he was never observed disorderly to exceed in eating or drinking; affable, yet conserving the dignity of his Majesty to all men; free and open in his conversation, little practicing the only lesson which *Lewis* the eleventh would learn his Son, *Charles* the ninth, *Qui nescit dissimulare nescit regnare.* So frugall, that though he had a Queen and plentiful Issue, and expended much more in repairing the Navy for recovering the Sovereignty of the narrow seas, then he received of his Subjects; and the Exchequer left empty by his Father; yet he encreased it before the first Scottish expedition to a greater mass then was ever found since it was exhausted by *Henry* the Eighth: So elegant and pure a stile he had in writing, that I expect to live to see it as much imitated by Englishmen, as *Caesar's* was among the Romans. Neither (which is no lesse remarkable) were any of these virtues stained with any suspected vice.

To the qualities of his mind were joyned Ornaments of his body every way answerable; a venerable and gracious aspect, yet best when he did not speak; agility of members so disposed, that in riding the great Horse, running the ring, vaulting, shooting in the Crosbow, Musket, and sometime the great Ordinance, He was thought to be the best Marksman and comeliest manager of the great Horse of any man in the three Nations; nor was lesse judicious in choosing a Winter Deere (which is one of the hardest taskes of a Woodman) then excellent in shooting a Deere. Dr. *Harvey* *Gen. Anim. exerc. 64. pag. 422. prop. med.* affirms him to be delighted in observations the Dr. made of the causes of Generation, from his dissection and

and Anatomies of the Deere in Hampton-Court, &c. but (whether wanting that magnanimity of looking dangers in the face upon their first budding, which is so necessary to the conservation of Regality; or whether not having sufficiently understood, that benefits conferred upon seditious men, never begot any obligation of gratitude upon them; but on the contrary they alwaies make advantage of them to get more, untill (not having more to expect, grow jealous lest their benefactors might by some means better reassume them, then they extort them) they hate them, which usually ends in the murder of Princes: but thinking to overcome his adversaries by his benefits, example and clemency; or to give satisfaction to all Factions of his Subjects,) he preferred all Factions in his Court and Councell (though he excluded them out of the Church) whereby he gave vent to all the Factions, so as the veneration of the Royal name became every day more contemptible, the Factions increased daily more formidable, his counsels became distracted and betrayed, and all the treasure he had gathered, consumed in the first Northern expedition against the Scots; where having many advantages to have subdued them, he made a dishonorable peace with them, to the increase of their reputation, and losse of his own; being destitute of treasure and the Scots no whit edified by his concessions, the next year upon no cause, given by the King, they not only arm, but enter the Nation in open hostility; from his granting them their concessions the English Faction urge his granting all things how dishonourable soever, even to the shedding of humane blood; nor would they have stayed there, had not the Kings utmost necessities put him upon other resolutions of seeking his preservation otherwaies then by granting all the exercise of the *Militia* and Regalities to those men, who made so bad use of his precedent benefits and favours.

*Machiavel* in the 26. chap. lib. 1. *de repub.* advises every new Prince, that unjustly possesses the City or Region of another, that by how much he understands himself more weak to conserve his Empire, either by lawfull ruling, or by instituting a free Common-wealth; by so much the more he intends this only, that as he is a new Prince, so in his Principality he does innovate all things: that he create new Magistrates marked by new names, and to them he choose new men; that he distribute the goods of the rich to poor men, and make them rich: And as it is reported of King *David*, so it may be said of him, *He hath filled the hungry with good things, and the rich he hath sent empty away, &c.* and the reason he gives is, that no man in his Region that holds any thing, but must confesse he obtained it of the Prince. But if he be so great at policy in Princes, who unjustly possess anothers right, to innovate all things; then in reason, besides the justness of it, there can be no greater prudence in Princes who reign by inherent birth-right, and to the wrong and prejudice of no man, to rule and govern by the old received and established Lawes of the Nation; to innovate nothing (where there is no apparent necessity) neither in Church or State, in Lawes or Religion; yet who hath not seen the most Saintlike and Glorious Monarch of the Western World (whose right was derived from innumerable ancestors, nor was there upon the face of the earth any one that could make any colourable pretence of right to his Crown) prosecuted, arraigned, condemned and executed by his own naturall Subjects, and his Queen and Posterity banished, for no other reason but because he did endeavour to have governed

The Kings  
cause was most  
prudent, as  
well as just.



A short view  
upon the 3.  
Nations since  
they cast off  
their obedience

and protected them by the known and established Lawes of the Nation: Solittle avails the skillfulness of the Pilot how good, great, or just soever, if the wind of divine favour, wherewith eternall providence governs mortall affaires, help not to bring our actions to their desired Port,

Sir Edward Coke in the Pleas of the Crown, *Cap. Petty Treason prop. fin.* observes, that in perusall of all books, Histories and Records, it was never found that Treason did ever attain the desired end, but did alwayes prove fallall & destructive to the undertakers: Let any man but see Gods judgments upon the Kirkmen of *Scotland*, and the Roman Catholicks of *Ireland*, if they be not either vagabonds abroad, or the most miserable slaves in the world at home; for although it so pleased the divine providence, that their iniquities prevailed against the King, yet did the divine vengeance overtake them by a third faction so new, contemptible and obscure, that it was not only in their undertaking not feared, but in the beginning never heard of in the world. It is true indeed the English Presbyterians (who had most basely accepted a canting thing called the Covenant from the Kirkmen of *Scotland*, and as injuriously imposed it upon their fellow Subjects) have not been so highly chastised in the generall by them, as they in *Scotland*, & the Roman Catholicks in *Ireland* have; yet were they so far from attaining their ends, that since all this Nation abounded with factions, that was the most hated and despised by all other: Nor were the other Factions much more reconciled and true to one another then to the Presbyterians; for the Army, commanded by *Oliver Cromwell*, turned out the Rump of the Long Parliament which headed the Independent party; and after *Cromwells* death the Army receives the Rump, and displaces his posterity; and surely in this world is not to be found in any family so many and so great distractions and dissensions, as were in the late Protector; nor did the Rump of the late Long Parliament maintain their long fought for and new restored Dominions, but were rejected by those creatures that did restore them, with very small hopes of ever attaining to it again. Yet did the Rump after reassume their supremacy (and proceeded as high and arrogantly as if they had never done wrong, but suffered all injustice and wrong by their interruption) when not only the Treasure of this Nation was exhausted, and all Crown, Church, and Delinquents Lands and Compositions converted and consumed; but the whole traffique of the Nation interrupted and destroyed. And if it were so dangerous a thing to a Nation for one Faction to be formidable in Church or State, how dangerous was it where there is no visible Church, and nothing but Factions in all the State?

Although man by nature be a sociable creature, and men do and ever did, since there were any records of time, live in society by right or usurpation to something superior, to either the Fathers or Masters Power; yet since the exercise of all power is politique, humane or voluntary, and therefore divers Princes govern by divers Lawes, as they sort with the natures and dispositions of their Subjects; and not only so, but all Princes govern their own Subjects by differing Lawes, according to their site and nature of their Subjects: for it were a most unreasonable thing that the same Lawes should be imposed upon Mediterranean places, where are observed in *Maritime*; or that the Laws and Usages of the City of *London* should be required to be observed in every Country Village, &c. And since that some Nations doe almost without contradiction, upon all occasions obey the Lawes of their Princes

Princes without dispute, as the *Muscovites, Armenians, Persian, Indians*, &c. others scarce ever, unless they be governed by their ancient received Laws ordinarily, & in extraordinary cases by Laws passed in some publick Assemblies, as the *German, Swedes, Polanders, and Danes*; others are governed peaceably by their ancient received Laws in the usuall administration of Justice, and in extraordinary cases doe admit of new ones, having them rarely passed in publick Conventions, such are the *Italians, Spaniards, and French*; and this doth not proceed from any abject, baseness or meanness of spirit; for in the world are no where found men more generous and valiant. And some are rarely governed long in peace, although governed by old Lawes ordinarily, and the consent of the major part of the Freeholders (as they conceive) by their representatives in passing new ones, as are the *English and Scotsish*. And also since the corruption of the best thing is worst, it will not be amiss before we conclude this Chapter and Book, to discourse this Problema, whether upon all occasions it be the only and necessary way to cure all distempers of State by a full convention in Parliament, according to the usuall constitution: And first we will see what may be said for it.

That the passing of Lawes in Parliament, where the major part of the Freeholders are represented, creates and begets a right understanding between the King and his Subjects, that it is not the intention of the Prince to alter the old Lawes, and introduce new ones to their prejudice. To this I subscribe. *Object. 1.*

That when Lawes are so passed, it confirms and strengthens the Prince both by the person and purse of his Subjects, in any designe he shall undertake, because the representatives of the Freeholders consent unto it. To this I subscribe. *2.*

That Parliaments have been of that antiquity, and the Nation so habituated to them, that it will never long be governed peaceably without them. To this I subscribe. *3.*

That the grievances of the Nation can never be so well represented and redressed as in Parliament, where the major part of the Freeholders are represented. To this I subscribe. *4.*

That men will lesse dare to abuse their Prince or Country by any sinister or indirect means when Parliaments are frequent and free. To this I subscribe. *5.*

The frequent use of Parliaments takes away all strangeness between the King and his Subjects, and begets a confidence, and right understanding between them. To this I subscribe. *6.*

That since it is necessary that every Prince in governing must necessarily ultimately resolve his confidence into something besides the Lawes, to which upon all occasions he may betake himself for the Execution, and defence of himself and Subjects; and this must be by a constant Army in pay of his Subjects, according to the institution of the Roman Legions: or out of a confidence of his own Subjects, or from some reason of state, trust the protection of his Person, and Lawes into the hands of Foreigners, as did the Kings of *Egypt* before *Solyman* conquered them; or as the King of *France* now does in the hands of *Switz* and *Scots*; or he must betake himself to the protection of a mercenary Army made up of his Subjects and Foreigners, as the *Turks Janizaries* and *Spahis* are: or establish his security and refuge upon the affections of his subjects, and intrust them with the Militia in such manner as hath beene used heretofore in *England*, and that this agrees better with *7.*



with the nature and constitution of English men then any of the other, as being established as well by common Law, as many Acts of Parliament. To this I subscribe.

To these may be added, that *Tacitus* in the life of *Agrippa*, makes it one great cause of the Romans conquering our Ancestors, That they consulted not in common. *Non illud sed ut singulis validissimas vires per singulos, quam quod in commune non consultant. Rursus ad Propulsandum communi periculum conveniunt. Ita dum singuli pugnant, universi succumbunt.*

2<sup>are</sup>

Yet quere whether *Rising* Chale in *Norfolke*, and old *Barnes* in *Wilt*, where are no Inhabitants but a few meane Tenants, sending twice the numbers to the Parliament with the county of *Forke*, and whether the County and City of *Durham*, sending none at all, and whether *Cornwall* sending ten times as many as either *Warwick-shire* or *Lincolshire*, and yet eyther of them bigger and far more rich Counties, Or whether Cities and Boroughs not only sending a like number of Citizens and Burgesses with the County, having alike vote with them of the County, be an equal representation of the Freeholders? Or whether the waies used in the Elections doe not intimate the Electors, and those that stand in Competition against one another, and that to such a height, That many of the Electors and those who stand, are never after reconciled?

1. 30

Answer.

It is true indeed, that if God had determined all things in this inferior Orbe without any variation, and that this thing were alwaies to be attained only by some one means, & that this in governing were by counsell in Parliament, then could there be neither reason or discourse upon variation and alteration of things, and no difference betweene the wisest of Princes, and the most foolish; but this is so far from truth that there is nothing sublunary not only variable, but doth vary every moment; neither is there any thing in Reason, Physick or State alike to all men; nay in all of them, the same thing, may be at one time good and profitable, at another time bad and hurtfull: What man sees not that in health, nature is not repaired by any man, without a proportionable measure of diet, which when he is indisposed may surcharge nature, to the overthrow of it, in him? Strong physick may be proper to a man at one time, and kill him at another. Parliaments, although ordinarily are the Kings surest refuge, yet by how much they are more excellent, by so much the worse are they corrupted. Times are and will be bad when they are not made so by any cause in the Prince, and so bad that in such conjuncture it may prove the utmost evill, if the Houses, or eyther of them shall assume the title of Parliament, or give head to such Factions and distempers. And no question when the Scots invaded England in 1640, it was unwise Counsell that advised the King to summon a Parliament, and worst of all to convene it at London, as things then stood. For that saying of *Tacitus* it is rather Rhetoricall, and makes against the Antiquity of Parliaments, then any way proves necessity of them upon all occasions, unless he could make *considere* and *pugnare* the same thing: nor could *Agricola* ever have obtained such victory against our Ancestors, if he had fought with no more then had counselled him.

Epilogue.

When I looke back and consider the unstable condition of mankind, especially among Islanders, and that often times the fate of good, religious and just men, is, in this World more calamitous, then of bad and vicious

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cious man, I did then conclude with my self, that Religion, Justice and Piety cannot of themselves procure peace and society to mankind: nay what is yet more lamentable, that first sublunary cause from whence all Subjects derive and expect their protection, is more subject to calamity, then the condition of the meanest of mortall men. Let a man take a survey of all the Kings in Britain since there were any Records of time, and see whether near one halfe of them did attain a naturall death; nor is this confined within the Seas which encompass our Isle, or a new thing in other parts of the world, for,

Juvenal *Ad generum Cereris sine cade, & sanguine pauci*  
Sat. 10. *Descendant Reges.*

I shall therefore before I conclude, endeavour to shew whether any peace and happinesse may be reasonably expected in this World, and if that may, then by what means it is to be attained; but that I might by degrees accomplish my end, I begin with man in his first Cause and being.

Man then in his first being is to be considered, either as created or begotten; as created, sure no man in his wits will deny but that God was the prime and only efficient cause of his creation, who without any ordinary concurrence of naturall causes did so create him: and that this was not from a confluence of naturall causes, is evident; for otherwise it had been a Generation, not a Creation; and necessarily something must be Created before any thing can be Generated of it.

Nor is God (if a man rightly considers it) lesse the prime and efficient cause of man in his Generation then in his Creation: for it must needs be evident to every man, That male and female are not the first cause of Generation, because then they would arise of themselves, without the influence of a superiour cause be apted for Generation, and so every Creature of it selfe in a like power of Generating, one as much as another; the contrary of which every one daily sees. Nor are all Creatures at all times alike disposed to Generation, but apted and disposed thereunto from some exterior cause; as we see in Foxes about the Brumall solstice, and Ravens in January, other creatures generally about the Vernal Equinox, and Deere about the Autumnall; which without all doubt doth proceed from the influence of the Sun, which in those seasons disposed them thereunto: but that the Sun is not the prime and efficient cause of Generation is confessed by Aristotle, where hee saith \* That in *omni creatura divinum quid reperiri, respondens Elemento stellarum, esseque omnipotentis creatoris vicarium*. It is not therefore the Sun, nor male and female, which can be the first cause of a man, or any other creature; but that minde or Soul which governs the innumerable and vast bodies of the Univers, and by a perpetuall motion of the Earth from West to East, according to the new Hypotheses in Astronomy, or of the Sun from East to West, after the former Hypotheses, through the divers Regions of the Earth, doth apt and dispose all things therein to their production and dissolution, So that God is the prime & efficient cause, as wel in the generation, as creation of man & other creatures, the manner only is different, God in generation from the confluence of necessary & contingent causes, doth Generate Man and other creatures, and originally did create them without any confluence of causes. Nor is God lesse the prime preserver of all Creatures, then the first cause of the Creation and Generation of them: for not all the sublunary meanes of eating, drinking, sleeping, exercise, physick, &c. can

Lib. 2. cap. 3.  
de Gen. anim.



preserve any creature thus Generated or Created, but some internall cause, whether it be called *anima*? or *pars anima*? or *quid anima*? or *aliquid habens animam*; aut *intellectus*? aut *denique numen*? and this is it in every Creature which doth worke towards its end, and orders all these things with unimitable and incomprehensible art and providence, & alwaies procures what is best, as well for its being, as well-being, as well for defence as ornament.

*Spiritus intus alit, totamque infusa per artus,  
Mens agitat molem.*

*Vir. Anti.*

And though all these outward things, however necessary for the preservation of every Creature, are accidentall and may be more or less acquired and communicated by every creature; yet this internall cause, this *numen*, this *Lar familiare*, or *anima*, which disposes and orders all these outward causes, is not to be acquired or communicated by any Creature; So that a man must needs confesse That in all Creatures, as well as Man, there is some particle of divine Aire, which doth order and dispose of all sublunary meanes in a wonderfull and diverse manner towards their preservation, untill by a propense naturall disposition, they all resolve into their first Principles.

But these outward meanes are acquired and communicated, by severall Creatures, divers and severall waies. Some doe acquire these outward meanes from an innate impulse, never with understanding or reason moving them; others rarely without their understanding or reason, and this latter only is Man.

Yet how fraile a mans reason and understanding is, even to the acquiring of things necessary for his preservation, is evidently seen almost in all men; for there is no man in this world who can by his understanding and reason so govern his actions, that those things so directed by him, have alwaies a like event; nay often times the same thing propounded by the same man, upon the same grounds and reasons hath so contrary an event, that at this time it ruins him, which other while was of much advantage to him. And this is daily seen among all sorts of men, so that it is most manifest that a mans understanding or reason cannot preserve him, as he is an intellectuall & ratiocinall Creature, nor Justice, Religion, and Piety as a sociable, but something superior to these.

What then shall we say to these things? Is Religion, Justice and Piety, and a mans understanding and reason of no account, because they cannot procure peace and preservation? Nothing lesse; for God having first created man and other creatures without the confluence of naturall causes, did ever after their first creation cease to make any other, but the species of all things have ever since been renewed by Generation: but in Generation God doth not renew the species of all creatures, from an absolute act of his own, but from the coition of male and female disposed thereunto, in perfect creatures: & oftentimes from matter disposed, many creatures are equivocally generated, without the coition of male and female, which thing is evidently seene from the yearly renewing of of frogs, caterpillars, &c. The antient Egyptians from the observation of the very many creatures thus generated, in the River Nile, did believe that all perfect creatures were originally, not from creation, but from equivocal generation. Yet though these spurious and imperfect creatures are thus generated, yet do they all generate their like; *Aristotle* only excepts the Eele; and I could never yet see either Row or Milt in any of them. But though God be the prime & efficient cause of the generation

*Hist. Anim.*

all

all creatures and therefore absolutely necessary to the production of every creature; and though the conditions which he hath ordained be absolutely necessary to the generation of every creature, yet are not these conditions always performed from any absolute necessity of the part of God, but often times from contingent causes and the will of the creature. For example, it is necessary that the influence of the Sun from material disposal in standing pools, should produce Frogs, yet are not always those Pools necessary to be, but are often made and often filled up, from voluntary and contingent causes of man; so *contraria naturae* in bodies apted and disposed both necessarily generate, yet is there no necessity that this *contractus* should be, but it might not have been. *See* Universal causes in nature produce nothing of themselves but as meeting with particular and material causes disposed to production, the universal causes are always prime and necessary, but then meeting with particular causes are not always so, but often times contingent and voluntary.

As God, by the confluence of naturall causes, is alwaies the first cause of all creatures by Generation, so is he the first cause of the preservation of all Creatures; yet doth not he preserve them by any absolute necessity of his part alone, but by such meanes as he hath ordained for every Creature; I say this meanes doth not alwaies come to passe from inevitable necessity of the part of God, but often times from the will of men, and contingent causes; for example, Ho man lives but as he daily repairs nature by eating and drinking, yet there is no necessity that he should eat or drink, but he may choofe whether he will or not.

So God is the prime preserver of intellectuall and ratiounall creatures; yet doth he not preserve them as other creatures void of understanding, but that hee give the intellectuall and ratiounall faculty of their Soul; yet there is no man but may chuse whether he will use his understanding and reason in his actions and that man who doth not use his understanding in his actions but only his affections and passions, how great soever he be, will live to see misery enough.

And though Religion and Justice cannot of themselves preserve men in peace and happinesse, but some superior cause which must order and dispose them thereunto, yet so necessary are they for the preservation of peace and happinesse, that wher soever they are neglected, men doe ever degenerate into straction, confusion and prophanesse; this superior cause which dignifies men above all other creatures, as well intellectuall as sociable, is God; who is the prime, efficient and necessary cause of peace and happinesse among sociable Creatures; and Religion and Justice are the necessary meanes which he hath ordained therefore. But though Religion and Justice be necessary for the peace and happinesse of any Nation, yet is it not alwaies necessary on Gods part men should be Religious and Just; but men may chuse whether they will be religious and just or not; God therefore is the first and necessary cause of peace and happinesse among men, and Religion and Justice the necessary meanes which he hath ordained thereunto; and this to be performed by man; and let no man thinke that God will save any man in this world, or take him in the world to come against his Willy; when men will not endeavor these things by such meanes as hee hath ordained; Man therefore by Religion and Justice ought to endeavour, through Gods blessing to attaine to Peace and Happinesse as well in this World, as in the next;



without which, hee cannot reasonably hope for cyther.

Having thus far treated of the titles of all society, and vindicated the Government and Lawes of my native Country, and mother Church of England: It will not be amiss before I conclude to add a word or two in vindication of Sir Edward Coke, my most honored Ancestor, since by words and writing he is so traduced, (as indeed

*Qui illa a seipso quem nulla opinio pinguet*) by men so maliciously or ignorantly or both. Among the rest one (a late writer of a Pamphlet, I will not call it because of the subject, being the life of our late Sovereigne, yet it is without name, although I thinke few men, but are sufficiently assured of the Author) upon a seditious and reproachfull speech, he layes tending to the dishonour of his Majesties Government, made by Mr. Coke, after the wonted rate of his lavish pen, without any more ado makes him a Chip of the old Block. But of all men I am content he next after one of our *Mercuries* should say it, since if he be not traduced unjustly hee can asperse the Nobility upon the faith of a *Mercury*; and so many others upon none at all; and his Quotations upon his Geography. So fals that upon search made by a Reader, and scarce any to be found to be true, upon the reprinting he blotted out the pages, and only quoted the Authors, and left the Reader to finde them where he could: If these be true, then certainly his *ipse dixit* is of small account; if fals then let him deny them.

But I can tell our Historian newes of his Soldier, whom he page 156. made openly to be shot to death in Saint *Pauls* Church yard, for as is confidently reported and beleevved he was apprehended about *Whitchell* June 17. and is at this time in faire election of being hanged, And being no lesse a more famous Geographer then Historian (though his second Edition suffers much for want of his expunged pages to finde out his quotations) hee page 123. makes the Town and Castle of *Cannoy* a place of principall command on that narrow channell which runs between the County of *Carnarvon* and the Isle of *Anglesey*: whereas the Town and Castle of *Cannoy* stand upon the River *Cannoy*, which parts *Denbighshire* from *Carnarvonshire*, a little below the mouth of the River *Giffon*: say, let any man see whether the River *Cannoy* falls nor into the Irish or *Virginian* Sea; but whether it falls into the Irish or *Virginian* Sea or not: yet certainly it cannot fall into the narrow Channell which parts *Carnarvonshire* from *Anglesey*, which begins at *Abermenay* ferry, and ends at *Portkathir* ferry, whereas the mouth of *Cannoy* is little lesse distant from *Portkathir* ferry, then that is from *Abermenay*, *Portkathir* ferry being upon the matter equidistant from either. What head then is to be taken to the *ipse dixit* of such a Geographer and Historian: let any man Judge: Sure he had more need mend his own Errors, then be so rash and lavish a Censurer of other mens.

Although I take not this mans tongue to be any slander, & so not worth an answering, or at most a bare denyall of what he sayes were sufficient, which I doe, since it is but *gratis dictum*; yet since other men have assumed to themselves such licence of aspersing him, it will not ill become mee to shew how unjustly he is aspersed in those things whereof they traduce him: as first this man makes him a seditious man, certainly it is very strange that in the living of 23 yeeres, the many of his writings, and his many employments, doth not produce so much as any suspicion thereof that I ever heard of. One thing yet pleases me, that in all these seditious commotions, Judge *Festius*

and

[illegible]

It is true indeed that he lived in disorder, without any Regard, yet as it became known by his ad<sup>r</sup>, to desire alterations of Princes; so is no man therefore to be surpris'd if he came in disfavor, often times the best of Princes have nothing so indignantly requir'd of them. This I am sure of, if living so disloyal & unpious at Court, if any crime much less than that of sedition, could have been found against him, it would have been imputed to the worst advantage, nor did he neglect to be reconcil'd to his chiefest adversary, and so man purpose married his youngest daughter to his brother, being in person and fortune little inferior to my Subject of her time, which was him no good.

Ornemen (though little versed in the things they lay to his charge) do lay in the general; That in his writings he was no friend to cyther King

This is to general a charge as no particular answer can be given to it, yet  
 thus much may be said, that being a Lawyer by profession, I hope it is not  
 to be a crime in any Subject, much lesse in him, to be a doer and honourer  
 of the Lawes: but being a Subject, and no Legislator, and commenting up-  
 on the Lawes, he must comment upon the Lawes as they were made, that  
 he could not make them better nor worse, if Lawes made were derogatory to  
 either Crowne or Church, it was the vice of the times, and no fault of his.  
 Yet I have often heard that hee was the first Grantor, and a great favourer  
 of promissions, to the utter ruine of all Ecclesiasticall jurisdiction.

Now in this first charge is, there is no man any way versed in our Law, but must needs understand, and for the latter, if any one can shew wherein he is so far favored them, that he ever granted any not warrantable by the Law, and they say something,

For his care of the Church, it sufficiently appeared in his endeavoring the passing of a Law, that every Patron should be sworn, as well as the incumbent against Simony; and also that Patron who should Symonically promote any Clerke, should not only forfeit that avoydance, but the advowson to the King; as also when upon pretence of concealment the Deane and Chapter Lands of *Northwich* were begged of the King, he did not only freely proffer the Chapter to have defended their cause, in person, though then very aged, but stated it and gave it them in writing, to be kept for the future, in case any after that pretence might be made, which was preserved by the Deane and Chapter among their Archives until the general deluge of our late dissolution swallowed up this among their other things: and so grateful an acknowledgment did the Society make, that upon his next Progress into *Northfolke*, they desired that he would lay his bones in that Cathedral, whose right he had so defended.

So devout a Son he was of the Church of *England*, in the observation of  
the Rites and Liturgy thereof, that I am confident that in neere forty yeeres  
before his death, if sicknesse or publick employment, or something extraordi-  
nary did not divert him, scarce one day passed wherein he was not twice a de-



Cap. 6. Art. 11.  
de Cive.

you assistant in the offering up of the publique Service of the Church: nor will he be less devoted to himselfe in his personall duty to his publick Employments. He will never so much as suspect of any other mans fraudulent service. These things and his learned labours, where he has as well deserved of his Country as any man before him, shall erect him in a moment of fame to posterity, when as the malice and ignorance of his adversaries shall be forgotten. For mine owne part, it is true, that I have ultimately resolved my subjection as a man, and my faith as a Christian into two principles, the one into the Law of Nature, the other into the Scriptures. *Domination fundatur in bono*, at no time or place did ever men live out of Society, and Domination is necessary to Society, but faith is divinely revealed in the Scriptures, and this happened in succession of time, neither is it yet received by near one tenth part of mankind, nor will I ever hope to mend what God hath made. It is therefore an idle thing to object *Imperium in Imperium* against us, neither is the objection to any purpose or understood by the objectors, for in the same God which hath engraven Lawes of Nature in the mindes of men, and who hath divinely revealed himselfe in the Scriptures, nor is there any thing in either, which is repugnant or contrary, but rather the one doth confirm and support the other; there is no better plea for mens subjection to either Kings, Fathers or Masters then is contained in the Scriptures, nor doth Christianity any waies reugne the Regality of Princes, but it is as common over the persons of all men, in all Cases, as where men are not Christian. Were not those the best Christians who in the primitive times lived under heathen Emperors, and persecutors without any civil disturbance on their parts, and cannot Christians be as good under Christian Kings, or is the case of Kings worse for their being Christian. Let any one shew me any thing in all the Scriptures which doth countenance sedition and I will abjure my Christianity; yet I will shew him almost infinite places, which without all contradiction commands obedience to higher Powers. They are therefore Wolves in Sheeps clothing, who abuse that ghostly Power left us by our Saviour for the benefit of mans salvation into licentiousness against their temporall obedience, due as well by the Law of Nature, as those by divine positive institution (as if men being qualified to perform the acts of Ghostly power, were free from naturall subjection, which as Priests they ought to preach as Gods Ordinance, R. 13.) & deserve rather to be persecuted to death, then obeyed when they do so: and by consequence Master Hobb understands not himself when hee makes his convenient argument against Christianity, upon supposition, that if one man may command the same thing upon the penalty of temporall death, and another forbid it upon pain of eternall, the whole structure of his *civitas* might be dissolved, which is no great matter if it were. But, I pray, what doe those men doe which resolve all subjection into the *civitas*, and the *civitas* into the civil part, and the civil part into the wills of men, into *do* or *dedi*, and not *dabo* or *faciam*, which make the Lawes of Nature voluntary and depending upon the wills of men, which make this *civitas* made by the wills of men superiour to the Law of Nature, and impossible to command any thing contrary to it, and yet (as ridiculously as blasphemously) make tyranny to be only *ab exercitio*, which make not only all Lawes of Nature but the Ghostly power ordained by Christ, in the Scriptures, instrumentall and subservient to it, and by consequence all Lawes of Nature and Divine Institution in the Scriptures to be subservient to this voluntary

luntary creature of a creature, this *do* or *dedi*, not *dabo* or *faciam*, from whence it must necessarily follow that not only every man who hath not entered into the civil part, is neither subject to the Law of Nature, or what God commands in the Scriptures, but every man who hath, may make himself free from them, when he will, if that rule be true, as it is *cujus est welle, ejus est nulla, & unumquodque dissolvi potest eo ligamine quo ligatum est*. And these are the excellent foundations upon which the body *de civi* is builded, or if they be not Master Hobbs may deny any of them if he please.

Reader, these observations and Elements were designed to have come forth some moneths sooner then now, which in regard of the slownesse of the presse I could not accomplish, and many of the sheets were printed off before the restauration of his Majesty, wherein the calamity of this Nation are mentioned, and wherein I have endeavored to demonstrate that there was no visible meanes under heaven to cure them but his Majesties restitution. If in endeavoring to shew that the originall causes of our distempers were as unjust as the continuance of them, I have rubbed some sores which are not convenient to be touched at this time: I say that it is impossible for any man to cure any malady, who first doth not inquire into the causes; and those were printed off in our distractions and discomposures. If any thing herein may conduce to the glory of God, the good and Peace of my native Country, as either advancing the Christian Religion, or the Peace and Prosperity of it, I shall give God the glory, and thus far account my selfe a happy man, that I have not only lived to my selfe but imployed my time in some measure to the benefit of other men;

*Et Pergrata Deus nobis hac otia fecit,  
Optimus est Patria jura referre labor.*

I Have made no Index conceiving the Contents of the Chapters and Heads of the Paragraphs, to be sufficient for a Treatise of this nature; but in regard of the ordinary failures of the presse, which encreased by my absence in the Country, the Reader is desired to correct these faults before he begin.

ERRATA *so correct*; other smaller faults of literall errors and pointing the Readers candour may passe over.

P Reface ob. line 15. for *equally moderately*, read *equally and moderately*. By what means, &c. Parag. 25. l. 3. *dele to*. Obler. pag. 5. ground 3. for *ground*, read *believe*. Obler. pag. 20. last line but 3. *chief government*, read. *chief men government*. p. 30. l. 28. for *any Bishops*, r. *any other Bishops*. p. 47. l. 8. for *Legall*, r. *Regall*. p. 52. margin. for 512. place 768. Appa. pag. 3. l. 20. for *brood*, r. *breed*. p. 41. l. 10. for *to direct*, r. *so direct*. Ele. p. 34. l. 7. for *the essentiall*, r. *and the essentiall*. p. 16. l. 22. for *populus*, r. *populi*. p. 31. para. 14 l. 4. for *to them* r. *to it*. Para. 19. p. 41. l. penult. *dele Henry 4*. Title Para. 15. p. 49. *dele*, and read *wherein consists the perfection of Government*. pag. 57. para. 3. l. 5. for *Silur* r. *Silius*. P. 58. margin for *Baonata*. r. *Baonatai*. pag. 60. para. 10. l. 2. for *cap. 1. cap 2. pap. 106 l. 2. for. all r. are.* pag. 35. *dele off all*.

FINIS.





